

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

LA.App..No. 407 of 2015

AGAINST THE ORDER/JUDGMENT IN LAR 315/1999 of PRL.SUB COURT, KOZHIKODE
DATED 12-12-2001

APPELLANTS/CLAIMANTS 4 TO 9:

1. JOSEPH, AGED 53 YEARS,
S/O.DEVASSYA, AKKAPPULLY HOUSE, MALAPARAMBA.P.O.,
NEDUNGOTTOR, KOZHIKODE TALUK.
2. MARY DAVIS, AGED 50 YEARS,
D/O.DEVASSYA, AKKAPPULLY HOUSE, MALAPARAMBA.P.O.,
NEDUNGOTTOR, KOZHIKODE TALUK.
3. VERONI, AGED 48 YEARS,
D/O.DEVASSYA, AKKAPPULLY HOUSE, MALAPARAMBA.P.O.,
NEDUNGOTTOR, KOZHIKODE TALUK.
4. MEERA, AGED 46 YEARS,
D/O.DEVASSYA, AKKAPPULLY HOUSE, MALAPARAMBA.P.O.,
NEDUNGOTTOR, KOZHIKODE TALUK.
5. MOLLY, AGED 44 YEARS,
D/O.DEVASSYA, AKKAPPULLY HOUSE, MALAPARAMBA.P.O.,
NEDUNGOTTOR, KOZHIKODE TALUK.
6. MERLY DAVIS, AGED 41 YEARS,
D/O.DEVASSYA, AKKAPPULLY HOUSE, MALAPARAMBA.P.O.,
NEDUNGOTTOR, KOZHIKODE TALUK.

BY ADV. SRI.THOMAS ANTONY

RESPONDENT/RESPONDENT : -

STATE OF KERALA,
REPRESENTED BY THE SPECIAL TAHASILDAR, (LA) NH II,
KOZHIKODE.

BY SR.GOVERNMENT PLEADER SRI.PADMARAJ

THIS LAND ACQUISITION APPEAL HAVING COME UP ON 13-11-2015
ALONG WITH LAA. 414/2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.R.RAMACHANDRA MENON & ANIL K.NARENDRAN, JJ.

**C.M.Appln.No.401 of 2015 in L.A.A.No.407 of 2015,
C.M.Appln.No.406 of 2015 in L.A.A.No.414 of 2015,
L.A.A.No.407 of 2015
&
L.A.A.No.414 of 2015**

Dated this the 13th day of November, 2015

JUDGMENT

Anil K.Narendran, J.

These C.M.Applications are filed seeking an order to condone the delay of 5211 and 4863 days respectively in filing L.A.A.Nos.407 of 2015 and 414 of 2015, against the common judgment and decree of the Subordinate Judge's Court, Kozhikode dated 12.12.2001 in L.A.R.Nos.315 of 1999 and 317 of 1999.

2. The relief sought for in the C.M.Applications is opposed by the respondent-State by filing counter affidavit contending, inter alia, that no sufficient cause has been shown to condone the inordinate delay in filing the appeals.

3. We heard the learned counsel for the petitioners/appellants and also the learned Senior Government Pleader appearing for the respondents.

4. The appellants in L.A.A.No.407 of 2015 are claimants

4 to 9 in L.A.R.No.315 of 1999 and the appellants in L.A.A.No.414 of 2015 are the legal heirs of the claimant in L.A.R.No.317 of 1999. The properties involved in L.A.R.Nos.315 of 1999 and 317 of 1999, situated in Vengeri Village in Kozhikode Taluk, were acquired for the construction of Kozhikode By-pass Road, based on a Section 4(1) notification issued under the Land Acquisition Act, 1894, which was published on 8.8.1993. The acquired land in L.A.R.No.315 of 1999 was having an extent of 0.0236 hectare and that in L.A.R.No.317 of 1999 another extent of 0.0419 hectare, both comprised in R.S.No.954/2. The property involved in L.A.R.No.315 of 1999 was taken possession on 22.12.1997 and that in L.A.R.No.317 of 1999 on 20.6.1997. The Land Acquisition Officer fixed land value at the rate of ₹ 32,60,400/- per hectare.

5. The claimants sought reference under Section 18 of the Land Acquisition Act and the reference court by a common judgment dated 12.12.2001 in L.A.R.Nos.314, 315, 317, 318 and 387 of 1999 awarded land value at the rate of ₹30,000/- per cent. Challenging re-fixation of land value by the reference court,

the State filed L.A.A.Nos.429, 548, 667, 921 of 2003, etc. L.A.A.No.429 of 2003 was against the judgment in L.A.R.No.317 of 1999 and L.A.A.No.667 of 2003 was against the judgment in L.A.R.No.315 of 1999. Those appeals were filed with delay and on receipt of notice in the delay condonation petitions, the petitioners/appellants herein entered appearance through lawyer. On 17.10.2007, after condoning the delay, this Court dismissed on merits L.A.A.Nos.429 and 667 of 2003 and also the connected appeals, holding that the land value fixed by the reference court in those cases is far below the rate sustained by this Court in L.A.R.No.774 of 2006 in respect of wetland situated in Chevayur Village.

6. According to the petitioners/appellants, they were under the belief that this Court by judgment dated 17.10.2007 dismissed all the appeals (in all 37 in number) relating to the land acquired for the construction of Kozhikode By-pass Road, from Vengeri Village. During the 2nd week of February, 2008, they came to know that, by the judgment dated 3.7.2007 in L.A.A.No.921 of 2003, this Court remanded L.A.R.No.318 of 1999

to the reference court for fresh consideration. Similarly, by the judgment dated 15.1.2004 in L.A.A.No.548 of 2003, this Court remanded L.A.R.No.387 of 1999 to the reference court for fresh consideration. The petitioners/appellants would also point out that, after the remand, the reference court by judgment dated 28.2.2009 re-fixed the land value in L.A.R.Nos.318 and 387 of 1999 at ₹50,000/- per cent. Against re-fixation of land value in L.A.R.No.318 of 1999, the State filed L.A.A.No.427 of 2010, which ended in dismissal by judgment dated 10.6.2015. No appeal was filed by the State against re-fixation of land value in L.A.R.No.387 of 1999.

7. The petitioners/appellants filed R.P.No.610 of 2008 before this Court, seeking review of the judgment dated 17.10.2007 in L.A.A.Nos.667 of 2003 and R.P.No.710 of 2008 seeking review of the judgment in L.A.A.No.429 of 2003. The said Review Petitions were dismissed by order dated 10.6.2015. After the dismissal of those Review Petitions, they filed the present Land Acquisition Appeals challenging the judgment dated 12.12.2001 of the reference court in L.A.R.No.315 of 1999 and

L.A.R.No.317 of 1999, with a delay of 5211 and 4863 days respectively. The petitioners/appellants would contend that, the delay has not occurred due to any wilful negligence or laches on their part, since they were diligently prosecuting the case.

8. As we have already noticed, the challenge made in L.A.A.Nos.407 and 414 of 2015 is against the land value fixed by the reference court in its judgment in L.A.R.Nos.315 and 317 of 1999. By the said judgment, the reference court re-fixed the land value at the rate of ₹30,000/- per cent. The said judgment of the reference court is dated 12.12.2001. If the claimants in L.A.R.Nos.315 and 317 of 1999 were aggrieved by re-fixation of land value by the reference court, they could have very well filed appeals before this Court under Section 54 of the Land Acquisition Act, after remitting the requisite court fee.

9. In the year 2003, the State filed L.A.A.Nos.429 of 2003 and 667 of 2003 contending that the re-fixation of land value by the reference court at ₹30,000/- per cent is on a higher side. The said appeals were filed with delay. On receipt of notice in the delay condonation petitions, the claimants entered

appearance through lawyer. Even after receipt of notice in the delay condonation petitions, the claimants could have filed appeals under Section 54 of the Land Acquisition Act, after remitting the requisite court fee. On 17.11.2007, after hearing both sides, this Court condoned the delay in filing L.A.A.Nos.429 and 667 of 2003 and the appeals filed by the State along with connected cases were dismissed on the ground that the land value re-fixed by the reference court is far below the rate sustained by this Court in respect of wet land acquired from Chevayur Village.

10. After the dismissal of L.A.A.Nos.429 and 667 of 2003 filed by the State, the petitioners/appellants herein filed R.P.Nos.610 and 710 of 2008 before this Court, seeking review of the judgment in L.A.A.No.667 of 2003 and L.A.A.No.429 of 2003. However, in the absence of any appeal filed by the claimants in L.A.R.Nos.315 and 317 of 1999 against the judgment of the reference court dated 12.12.2001, claiming further enhancement of land value, they cannot be aggrieved by the dismissal of L.A.A.Nos.429 and 667 of 2003 filed by the State.

11. R.P.Nos.610 and 710 of 2008 filed by the petitioners/appellants herein were originally dismissed by order dated 1.7.2009 observing that they cannot be aggrieved by the dismissal of the appeals filed by the State. Later, by an order dated 13.7.2009 the Review Petitions were re-posted and the learned Government Pleader was directed to ascertain whether appeals have been filed challenging the subsequent award passed by the reference court in L.A.R.Nos.318 and 387 of 1999.

12. The subsequent award passed by the reference court re-fixing the land value at ₹50,000/- per cent in L.A.R.No.318 of 1999 was under challenge in L.A.A.No.427 of 2010 filed by the State, which ended in dismissal by the judgment dated 10.6.2015. By a separate order dated 10.6.2015, this Court closed R.P.Nos.610 and 710 of 2008, observing that the Review Petitions were filed only seeking review of the judgments wherein the State was the appellant. Since the Review Petitions were already dismissed by another Bench, at this distance of time there is no reason for recalling the judgment. Therefore, leaving open other remedies of the review petitioners, this Court made it

clear that no separate orders are necessary in the Review Petitions. It was thereafter, the petitioners/appellants filed L.A.A.Nos.407 and 414 of 2015 against the land value fixed by the reference court in its judgment dated 12.12.2001 in L.A.R.Nos.315 and 317 of 1999, along with C.M.Appln.Nos.401 and 406 of 2015 seeking an order to condone the delay of 5211 and 4863 days respectively in filing the appeals.

13. As we have already noticed, if the claimants in L.A.R.Nos.315 and 317 of 1999 were really aggrieved by the re-fixation of land value at ₹30,000/- per cent by the reference court, they could have very well filed appeals before this Court under Section 54 of the Land Acquisition Act, after remitting the requisite court fee. Even after receipt of notice in the delay condonation petitions in L.A.A.Nos.429 and 667 of 2003 filed by the State, they could have filed appeals under Section 54 of the Land Acquisition Act, claiming enhancement in the land value, after remitting the requisite court fee. According to the petitioners/appellants, they were under the belief that this Court by the judgment dated 17.10.2007 dismissed all the appeals (in

all 37 in number) relating to the land acquired from Vengeri Village. They would contend that, only during the 2nd week of February, 2008, they came to know about the judgment of this Court dated 15.1.2004 in L.A.A.No.921 of 2003 and that dated 3.7.2007 in L.A.A.No.548 of 2003, remanding L.A.R.No.318 of 1999 and L.A.R.No.387 of 1999 to the reference court for fresh consideration. However, we notice that the claimants in L.A.R.Nos.315 and 317 of 1999 and those in L.A.R.Nos. 318 and 387 of 1999 were represented before this Court by the very same lawyer.

14. In **State of Karnataka v. S.M.Kotrayya (1996 (6) SCC 267)** the Apex Court, in the context of Section 21 of the Administrative Tribunals Act, 1985 held that, the Tribunal should satisfy itself whether the explanation offered by the applicants for the delay which occasioned was proper. The explanation that they came to know of the relief granted in a similar case by the Tribunal in August, 1989 and that, they filed the application immediately thereafter is not a proper explanation at all.

15. In **State of Orissa v. Mamata Mohanty (2011 (3)**

SCC 436) the Apex Court, in the context of Articles 32 and 226 of the Constitution of India held that, notwithstanding inapplicability of Limitation Act, 1963 in writ jurisdiction, the principles enshrined in the doctrine of limitation being based on public policy, are applicable in writ jurisdiction. The Court has consistently rejected the contention that a petition should be considered ignoring the delay and laches in case the petitioner approaches the Court after coming to know of the relief granted by the Court in a similar case, as the same cannot furnish a proper explanation for delay and laches. Therefore, a litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a reasonable time.

16. In view of the dictum laid down by the Apex Court in S.M.Kotrayya' case (supra) and Mamata Mohanty's case (supra) the explanation offered by the petitioners/appellants that, they were under the belief that this Court by the judgment dated 17.10.2007 dismissed all the appeals relating to the land acquired from Vengeri Village and that, only during the 2nd week

of February, 2008, they came to know about the judgment of this Court remanding L.A.R.No.318 of 1999 and L.A.R.No.387 of 1999 to the reference court for fresh consideration, and immediately thereafter, they filed R.P.Nos.610 and 710 of 2008 seeking review of the judgment in L.A.A.No.667 of 2003 and L.A.A.No.429 of 2003, is not a proper explanation at all for the inordinate delay and laches on their part in challenging the judgment of the reference court dated 12.12.2001. Such a plea is wholly unjustified and cannot furnish any ground for condoning the delay and laches.

17. In R.P.Nos.610 and 710 of 2008 the petitioners/appellants herein sought for an order to review the judgment dated 17.10.2007 in L.A.A.Nos.667 and 429 of 2003. As we have already noticed, in the absence of any appeal filed by the claimants in L.A.R.Nos.315 and 317 of 1999 against the judgment of the reference court dated 12.12.2001, claiming further enhancement of land value, they cannot be aggrieved by the dismissal of L.A.A.Nos.429 and 667 of 2003 filed by the State. Those Review Petitions were originally dismissed by order

dated 1.7.2009, which were re-posted by an order dated 13.7.2009. Later, by order dated 10.6.2015, this Court closed R.P.Nos.610 and 710 of 2008, finding no reason to recall the judgment. Therefore, in the affidavit accompanying the C.M.Applications, no explanation much less a reasonable or satisfactory explanation has been stated for condonation of the inordinate delay of 5211 and 4863 days respectively in filing L.A.A.Nos.407 and 414 of 2015.

18. In **Brijesh Kumar v. State of Haryana (2014 (11) SCC 351)** the Apex Court held that, the Courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the Court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. When mandatory provision is not complied with and the delay is not properly, satisfactorily and convincingly explained, the Court

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cannot condone the delay on sympathetic grounds alone.

19. In the case on hand, none of the reasons stated in the affidavits accompanying the C.M.Applications satisfactorily explain the inordinate delay of 5211 days (more than 14 years) and 4863 days (more than 13 years) respectively in filing L.A.A.Nos.407 and 414 of 2015. In such circumstances, we find absolutely no reasons to condone the delay in filing L.A.A.Nos.407 and 414 of 2015.

In the result, C.M.Appln.Nos.401 and 406 of 2015 are dismissed. Consequently, L.A.A.Nos.407 and 414 of 2015 are also dismissed on the ground of inordinate and unexplained delay and laches.

Sd/-

**P.R.RAMACHANDRA MENON,
JUDGE**

Sd/-

**ANIL K.NARENDRAN,
JUDGE**

skj

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P.A to Judge