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HIGH COURT OF DELHI AT NEW DELHI

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LA.Appeal No.293/2014

Decided on : 6th January, 2015

SH. AJAY BAJPAI

..... Appellant

Through: Mr.Chander Jeet Yadav & Ms. Priyanka
Yadav, Advocates.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Sanjay Kumar Pathak, Mr. Sunil
Kumar Jha & Mr. Kushal Raj Tater,
Advocates for R-1/LAC (L&B).
Mr. D.P. Kaushik, Advocate for DDA/R-2.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

C.M. No.9845/2014 (condonation of delay)

1. This is an application for condonation of delay of 2190 days in filing of this appeal under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') against the judgment of the reference court dated 19.05.2008 by virtue of which the reference of the appellant for enhancement of compensation has been answered against the appellant.

2. The only facts pleaded for seeking condonation of delay as stated in para Nos.1 to 5 of the application read as under:-

“1. That the appellant is not a resident of Delhi and even prior to the present award residing in Gurgaon, Haryana and during this period of proceedings of law could not be aware about the present reference petition and was fully dependent upon the instructions of counsel only.

2. That due to non appearance of the counsel the present reference petition has been decided ex parte judgment dated 19.05.2008 from the court of Ld. Sh.S.S.Handa, ADJ. Delhi.

3. That due to no knowledge about the pendency of the present reference petition and no summons issued to the appellant pertaining to the same, appellant could not be able to file revision petition to set aside the ex parte judgment or prefer appeal before the Hon’ble High Court of Delhi.

4. That as and when the appellant came to know about the decision of the Hon’ble Supreme Court of India approached the counsel but due to death of the counsel no important details could be find out.

5. That if the delay of 2190 days in filing of the appeal is not condoned then the appellant shall suffer irreparable loss and injury. Therefore, the appellant has shown sufficient cause for condonation of delay.”

3. The issue with respect to condonation of delay in land acquisition matters is no longer res integra and there are three main judgments of the Supreme Court on this aspect. The earliest of the judgment is in the case of Mewa Ram (deceased) by his LRs and Ors. Vs. State of Haryana through The Land Acquisition Collector, Gurgaon (1986) 4 SCC 151. The

second case is the recent judgment in the case of Basawaraj and Ors. Vs. The Special Land Acquisition Officer AIR 2014 SC 746. Third judgment is the judgment in the case of Brijesh Kumar & Ors. Vs. State of Haryana & Ors. (2014) 4 SCALE 50. In all the aforesaid cases, Supreme Court has reiterated the fact that once there is inaction and/or want of bonafide, and/or negligence, then, delay cannot be condoned.

4. In the case of Mewa Ram (supra), Supreme Court has observed that merely because enhanced compensation has been granted in other cases the same would not be a ground for filing of the appeal with condonation of delay to seek enhancement in compensation. In the case of Basawaraj (supra), Supreme Court has observed that equity is not a ground to extend the limitation period by condonation of delay if there is no 'sufficient cause'. It is further observed by the Supreme Court that an unlimited limitation would lead to a sense of insecurity and uncertainty and which deprives finality to a judgment by which equity and justice have come into play. The finality of a judgment cannot be disturbed by a party's own inaction or laches. The relevant paras of the judgment in the case of Basawaraj (supra) are paras 12, 13 and 15 and the same read as under:-

“12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied

with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed lex" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

13. The Statute of Limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale.

According to Halsbury's Laws of England, Vol. 24, p. 181: 330. Policy of Limitation Acts. The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a Defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence.

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence' or laches.

(See: Popat and Kotecha Property v. State Bank of India Staff Assn. : (2005) 7 SCC 510; Rajendar Singh and Ors. v. Santa Singh and Ors. : AIR 1973 SC 2537; and Pundlik

Jalam Patil v. Executive Engineer, Jalgaon Medium Project : (2008) 17 SCC 448).

15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

(underlining added)

5. Supreme Court refused to condone the delay of 5½ years in the case of Basawaraj (supra).

6. The judgment in the case of Basawaraj (supra) has been followed by the Supreme Court in the subsequent judgment in the case of Brijesh Kumar (supra). In the case of Brijesh Kumar (supra), Supreme Court refused to condone the delay of 10 years by observing that distinction will have to be drawn between delay and inordinate delay i.e cases where there

are want of bonafides or inaction or negligence. Supreme Court has categorically observed that a person cannot take benefit merely because some other person has taken relief inasmuch as relief can only be given to a diligent person. Supreme Court has further observed that merely coming to know of the relief granted by the Court in a similar case cannot be a ground for condoning the delay and laches.

7. The relevant paras in the case of Brijesh Kumar (reads) are paras 11 to 13 and 16 and the same read as under:-

“11. 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. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.

12. It is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.

13. In *State of Karnataka and Ors. v. S.M. Kotrayya and Ors.* (1996) 6 SCC 267, this Court rejected the contention that a petition should be considered ignoring the delay and laches on the ground that he filed the petition just 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. The Court observed that such a plea is wholly unjustified and cannot furnish any ground for ignoring delay and laches.

16. In the instant case, after considering the facts and circumstances and the reasons for inordinate delay of 10 years 2 months and 29 days, the High Court did not find sufficient grounds to condone the delay.”
(underlining added)

8. In view of the ratio of the judgments of the Supreme Court quoted above and the fact that there is absolutely no sufficient cause pleaded or shown to exist in the facts of this case, this Court would not like to exercise its powers under Section 5 of the Limitation Act, 1963 read with Order 41 Rule 1 of Code of Civil Procedure, 1908 (CPC) for condonation of delay.

9. I may note that so far as the expression sufficient cause is concerned, implicit in that expression is the aspect that there is something which almost physically prevented the filing of the appeal during the period of delay. Therefore, the facts which are to be pleaded for

condonation of delay have to be such facts that appellants were not at all in a position and were completely prevented by certain facts from filing of the appeal. Of course, 'physical prevention' is not to be literally interpreted but it is to be interpreted that the facts as stated are such that the appeal could not be filed within the period of limitation or soon after the period of limitation with valid explanation given for condonation of delay. It may be noted that unnecessary condonation would mean striking at the root of the principle of finality of the judgments of the court below.

10. In view of the above, there is no merit in the application, and the same is therefore dismissed.

L.A. Appeal No.293/2014

1. Since the application for condonation of delay is dismissed, the appeal would also stand dismissed as time barred.

V.K. SHALI, J

JANUARY 06, 2015/dm