

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.422 OF 2016**

Shri Piety Noronha
Legal heir of late
Nuno A.F. Noronha
r/o. H.No.1137,
Madicotto, Cuncolim,
Salcete, Goa.

...Petitioner

V/s

1. Cuncolim Municipal Council
Through its Chief Officer
Having its office at
Cuncolim, Goa.

2. Deputy Collector (L.A.)
Collectorate South,
Margao-Goa.

... Respondents

Shri C.A. Coutinho with Shri Shailesh Redkar,
Advocate for the Petitioner.
Shri S.D. Padiyar with Shri P. Arolkar, Advocate
for Respondent No.1.
Shri Rajesh Shivolkar, Additional Government
Advocate for Respondent No.2.

CORAM : C.V. BHADANG, J.

Reserved on : 15th September, 2016

Pronounced on : 19th October, 2016

ORDER :

The challenge in this petition is to the
order dated 9/02/2016 passed by the learned
District Judge, South Goa at Margao in Civil
Misc. Application No.117/2015. By the impugned

order, the learned District Judge has condoned the delay in filing an application under Order IX Rule 13 of the Code of Civil Procedure (CPC, for short) for setting aside judgment and award dated 26/03/2013 passed in Land Acquisition Case No.36/2011.

2. The brief facts necessary for the disposal of the petition may be stated thus:

That 2,700 square metres of land from out of Survey No.666/8 and 575 square metres from out of survey no.666/5, belonging to the petitioner was acquired by the first respondent Municipal Council, for parking area for Cuncolim market Community Hall. The Land Acquisition Officer awarded compensation at the rate of Rs.43/- per square metre for the paddy land (survey No.666/8) and at the rate of Rs.92/- per square metre for bharad land (Survey No.666/5). The land was tenanted to one Rauji Govind Naik. The petitioner filed a reference under Section 18 of the Land Acquisition Act (Act, for short) being

LAC No.36/2011 while the tenant Rauji Naik filed a separate reference being LAC No.29/2011 before the learned District Judge, claiming enhancement at the rate of Rs.5,000/- per square metre. Both these reference cases proceeded ex-parte against the first respondent Municipal Council. The learned District Judge decided LAC No.36/2011 by judgment and award dated 26/03/2013 enhancing the compensation at the uniform rate of Rs.816/- per square metre. The LAC No.29/2011 by the tenant was decided on 28/06/2013 granting enhancement at the rate of Rs.585/- per square metre. The District Judge had held that Rauji Naik was the deemed owner of the land. The total enhancement which is granted to the petitioner and the tenant works out to Rs.1,401/- per square metre.

3. The first respondent filed Civil Misc. Application No.117/2015 for condonation of delay in filing an application for setting aside the ex-parte award. The respondent no.1 claimed that

it became aware of the award on 8/10/2013 when it was produced in another LAC No.27/2011. It is next contended that the Chief Officer of the respondent no.1 became aware of the said award on 27/01/2014 when he was cross-examined in LAC No.27/2011. Lastly, it was contended that the award was also noticed on 13/08/2014 on receipt of a notice in execution application no.14/2014 filed by the petitioner herein. It is contended that inquiry was made, when it was found that there were no records or case papers of the said acquisition case in the office of the respondent no.1, except an entry of the summons in the inward register. Thereafter, the Chief Officer approached their advocate, obtained certified copies on 11/09/2014 and the matter was referred to the advocate for legal advise. Ultimately, the application for setting aside the ex-parte award alongwith an application for condonation of delay was filed on 12/05/2015.

4. According to the respondent no.1, from

2011 five different Chief Officers worked with the respondent no.1, as a result of which, it was difficult to keep a track of the matter. The present Chief Officer took charge on 4/09/2014. According to the respondent no.1, there was a delay of one year eight months and ten days in filing the application, for setting aside the ex-parte award.

5. The petitioner opposed the said application claiming that the delay is at least of two years and twenty five days. It was contended that the delay has not been properly explained. It was contended that there is gross negligence on the part of the respondent no.1 in filing the application and it cannot be said that the delay was occasioned due to circumstances beyond the control of the respondent no.1. It was thus contended that there was no ground or justification made out for condonation of delay.

6. The learned District Judge referring to the decision of the Hon'ble Supreme Court in the case of **Collector, Land Acquisition, Anantnag & Anr. V/s. Mast. Katiji & Ors. AIR 1987 SC 1353** and some other decisions came to the conclusion that no benefit would accrue to the respondent by 'allowing the proceedings to drift, but which had apparently drifted on account of different officers who were at the helm of affairs at the relevant time'. The learned District Judge did not accept that the respondent which is a Municipal Body has been negligent. It was found that the respondent would not stand to benefit as they had to bear the responsibility of paying the compensation. It was found that no prejudice would be caused to the petitioner, if the delay is condoned. In that view of the matter, the application was allowed which order is subject matter of challenge in this petition.

7. I have heard Shri Coutinho, the learned Counsel for the petitioner and Shri Padiyar, the

learned Counsel for the respondent no.1. With the assistance of the learned Counsel for the parties, I have gone through the relevant records and the impugned order passed.

8. It is strenuously urged on behalf of the petitioner that the respondent no.1 has been grossly negligent and lackadaisical in filing the application for setting aside the ex-parte award. The learned Counsel has pointed out that admittedly there was entry in the inward register about the summons in the LAC No.36/2011 having been received. It is submitted that in the first instance, the respondent no.1 failed to put in appearance and contest the reference and, secondly, even though the respondent no.1 became aware of the award on their own saying on 8/10/2013, the application for condonation of delay was filed on 22/05/2015. It is submitted that the delay has not properly been explained. The learned Counsel has submitted that the fact that there were five different Chief Officers

who worked during this period is not a sufficient ground and the Municipal Council cannot take the benefit of it being a public body, as such. The learned Counsel has pointed out that the learned District Judge has not properly considered the relevant circumstances while condoning the delay.

9. On behalf of the petitioner, reliance is placed on the decisions in the case of **S.V. Matha Prasad V/s. Lalchand Meghraj & Ors. 2007 (14) SCC 772, Commissioner, Nagar Parishad, Bhilwara V/s. Labour Court, Bhilwara & Anr. (2009) 3 SCC 525**, and **P. Mani Moopanar V/s. K. Rajammal & Ors. (2005) 11 SCC 800**.

It is submitted that there is gross negligence and laches and the impugned order shows exercise of discretion with material irregularity, requiring interference.

10. On the contrary, Shri Padiyar, the

learned Counsel for the respondent no.1 has submitted that undisputedly, the land was a tenanted land and, as such, separate enhancement could not have been granted to the landlord as well as the tenant. It is submitted that the total enhancement works out to Rs.1,401/- per square metre, as against the rate granted by the Land Acquisition Officer which is less than Rs.100/- per square metre. It is submitted that the delay was occasioned on account of the change of the Chief Officers. It is submitted that the present Chief Officer after having taken charge on 4/09/2014 has promptly taken steps to obtain certified copies and then to refer the matter for legal advice. It is submitted that there is no presumption that delay is intentional or out of negligence, as the respondent no.1 does not stand to gain by approaching the Court late. On behalf of the respondents reliance is placed on the following decisions :

(i) N. Balkrishnan V/s. M.

Krishnamurthy 1998 (7) SCC 123,

(ii) Indian Oil Corporation Ltd. & Ors. V/s. Subrata Borah Chowlek & Ors. (2010) 14 SCC 419,

(iii) State of Karnataka V/s. Y. Moideen Kunhi (dead) by LR's (2009) AIR SC 2577,

(iv) G. Ramegowda, Major V/s. Special Land Acquisition Officer, Bangalore 1988 AIR SC 897,

(v) Esha Bhattacharjee V/s. Managing Committee of Raghunathpur Nafar Academy & Ors. 2013 (12) SCC 649,

(vi) Essen Deinki V/s. Rajiv Kumar (2002) 8 SCC 400,

(vii) Trimbak Gangadhar Telang V/s. Ramchandra Ganesh Bhide 1977 AIR SC 1222,

(viii) Estralla Rubber V/s. Dass Estates Pvt. Ltd. 2001 (8) SCC 97,

(ix) State through Special Cell, New Delhi V/s. Navjot Sandhu & Ors. (2003) 6 SCC 641,

(x) Sahlini Shyam Shetty & Anr. V/s. Rajendra Shankar Patil (2010) 8 SCC 329,

(xi) Bansidhar Goyenka V/s. Alok Kumar & Ors. 2011 AIR (MP) 144,

(xii) Bajirao Tukaram Manav V/s. Administrative Office, 1985 (1) BCR 587

**(xiii) Goa Housing Board V/s.
Rameshchandra Govind Pawaskar & Anr.
2011 (10) SCC 371,**

**(xiv) Janaki N. Morajkar V/s.
Special Land Acquisition Officer -
First Appeal No.221/2003,**

**(xv) Goa, Daman & Diu Industrial
Development Corporation V/s. Vassu
Jaidev Gaonkar 2001 (Supp 1) BCR 663,**

**(xvi) Comunidade of Colvale V/s.
Deputy Collector and Ors. (FA
no.293/2005 & Ors.)**

11. It is submitted that the decisions relied upon by the respondent are distinguishable on facts.

12. In counter reply, it is submitted by the learned Counsel for the petitioner, that merits of the matter cannot be gone into, while considering the application for condonation of delay. It is submitted that the petitioner had disclosed the fact about the land being tenanted and thus there is no misrepresentation whatsoever.

13. I have given my anxious consideration to the rival circumstances and the submissions made. There cannot be any manner of dispute that the delay cannot be condoned without sufficient cause being shown [see **Maniben Devraj Shah** (supra)]. However, what is 'sufficient cause' depends upon facts and circumstances of each case.

14. At the outset, it may be mentioned that on their own saying the respondent no.1 came to know of the ex-parte award for the first time on 8/10/2013, when it was produced in LAC No.27/2011 and from the two subsequent dates namely 27/01/2014 and 13/08/2014. The application for condonation of delay filed on 22/05/2015. Thus, the delay would be of about one year eight months and fourteen days. Broadly, the reason given is about five Chief Officers having changed and some time having been taken up, for obtaining legal advice.

15. The principles governing the issue of condonation of delay are no longer res integra, as the issue has been subject matter of several decisions, both of the Hon'ble Supreme Court and various High Courts. The real difficulty arises in application of these principles to individual facts of a case. Thus, although the principles are well settled, the question whether a case for condonation of delay is made out or not, largely depends upon facts and circumstances peculiar to a particular case.

16. The Hon'ble Supreme Court in the case of **Esha Bhattacharjee** (supra) after taking a survey of several decisions holding the field has culled out the principles applicable in para 21 and 22 of the judgment. It has been inter alia held that there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with the application for condonation of delay, for the Courts are not supposed to legalise injustice but are obliged to remove

injustice (*para 21.1*). The term 'sufficient cause' should be understood in its 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 (*para 21.2*). The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception (*para 21.12*). The State or a public body or an entity representing a collective cause, should be given some acceptable latitude (*para 21.13*). 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 (*para 21.6*).

17. It can thus be seen that although State or a public body (as in the present case),

cannot claim any special privilege over and above a private litigant, in the matter of condonation of delay, such a public body or an entity representing a collective clause can be given some acceptable latitude, as held by the Hon'ble Supreme Court. The Court has also to be vigilant to ensure that adherence to strict proof should not affect public justice. Ultimately it is the public exchequer which is at stake. In the present case, although the respondent no.1 could have acted with greater expedition, it cannot be said that their was deliberate causation of delay.

18. On behalf of the petitioner reliance is placed on the following decisions to submit that in the matter of condonation of delay the merits cannot be gone into :

(i) Maniben Devraj Shah V/s. Municipal Corporation of Brihan Mumbai 2012(3) ALLMR 450,

(ii) Basawaraj & Anr. V/s. Special Land Acquisition Officer 2013(14) SCC 81,

(iii) Brijesh Kumar & Ors. V/s. State of Haryana & Ors. 2014 (11) SCC 351,

(iv) The Additional Commissioner of Sales Tax V/s. Kayani Bakery, Pune in notice of motion 9/10 of 2016.

Thus, it would not be permissible to go into the merits of the challenge and the question whether the ex-parte award translates into the grant of substantial enhancement. However, this would not preclude this Court from taking note of the fact that the delay in filing similar application in respect of the judgment and award passed in the reference filed by the tenant has been condoned and the application for setting aside the ex-parte award in respect of that reference is pending before the learned District Judge. Eventually the dispute in both the reference cases is same about the appropriate market valuation of the land. For this reason also, I am not inclined to interfere with the impugned order passed by the learned District Judge. In the view which I am inclined

to take, it would not be necessary to dwell on all the cases cited on behalf of the parties.

19. In the result, the Writ Petition is dismissed with no order as to costs.

C.V. BHADANG, J.

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