

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL REVISION PETITION No.4836 OF 2005

Dated 17-3-2016

Between:

Velicheti Neeraja and others.

..Petitioners.

And:

The Revenue Divisional Officer-cum-Land
Acquisition Officer, Vizianagaram and others.

..Respondents.

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ORDER:

This revision is preferred questioning the order dated 22-11-2004 in I.A.No.560 of 2001 in L.O.P.No.89 of 1989.

Revision petitioners herein filed the above referred I.A. to condone delay of 2015 days in filing the petition to set aside abatement caused due to death of 4th claimant and the trial court on a consideration of contentions and rival contentions of both parties, dismissed the said application holding that the petitioners failed to plead as to when they came to know about the pendency of the matter and that the long delay of 2015 days is not explained with convincing reasons. Questioning the same, present revision is preferred.

Advocate for petitioners submitted that the present petitioners are the legal heirs of claimant No.4 who died on 14-10-1995. He further submitted that his son who was 3rd claimant also died on 2-8-1996 and his wife, son and daughter are the petitioners herein and they are necessary parties and they have no knowledge about the pendency of the Land Acquisition O.P. when opposite parties tried to interfere with their possession in pursuance of the compromise decree dated 10-12-2000, they came

to know about this O.P. and filed the application in the process, the delay is caused. He further submitted that lower court has not properly appreciated the plea of petitioners and erred in dismissing the application. He further submitted that main case is under Land Acquisition Act and it is obligatory for the state to bring the legal representatives on record and even other parties who are aware of the death of 4th claimant also did not take any steps to bring the legal representatives but proceeded with the matter without the presence of the petitioners herein who are legal representatives of 4th claimant and that the order of the lower court is incorrect.

On the other hand, advocate for respondents opposed and supported the order of the trial court.

Now the point that would arise for my consideration in this revision is whether the order of the court below is legal, correct and proper?

POINT:

As already stated, an application is filed to condone delay of 2015 days in filing the petition to set aside the abatement caused due to the death of 4th claimant. In the affidavit filed in support of the delay condonation petition, it is contended that the lands in award number 2 of 1989 are covered by S.No.119 and 120 of Gollela Mulagam village and that the 4th claimant filed his claim statement in the above O.P. and reference was made on 22-7-1989 as there was dispute with regard to title, and 4th claimant after filing of the claim statement died on 14-10-1995 leaving behind him his son 3rd claimant, 4 daughters as his legal heirs and as the claimants 1 and 3 died during the pendency of O.P. their legal representatives are brought on record as claimants 6 to 11 and 12 to 16 and the son of deceased 4th claimant is the husband of deponent, who looked after affairs of his father but he also died on 2-8-1996 within ten months after the death of 4th claimant and she and other petitioners

who are legal heirs of 4th claimant are necessary parties. It is further stated that she being lady, due to sudden death of father-in-law i.e., 4th claimant and thereafter her husband i.e., 3rd claimant, only came to know about the case when claimants on record colluded together and tried to interfere in pursuance of compromise decree. It is further contended that there was no intimation to her either from referring officer or from the other claimants on record or from the office of the advocate, appearing for the 4th claimant, thus the delay of 2015 days in filing the petition to set aside abatement.

This application was resisted on behalf of respondent, they contended that the son of 4th claimant who was husband of first petitioner herein was represented by advocate and O.P.89 of 1989 was disposed of on 18-1-2000 as per law and without challenging that the petitioners filed application which is not maintainable under law. They also contended that the only course open to the petitioners is to file a revision before High Court questioning award. It is further contended that the petitioners remained silent for a long period and that they were not parties to the compromise award and therefore, application is liable to be dismissed.

As seen from the material, though petitioners contended that after the compromise decree i.e., after 10-12-2000, the other parties tried to interfere with possession and they came to know about the award passed in O.P.No.89 of 1989, entire affidavit is silent as to the date on which deponent actually came to know about the pendency of O.P.No.89 of 1989 and about order dated 10-12-2000. Admittedly, even after the death of 4th claimant, husband of first petitioner herein was alive for some time and he was also contesting the O.P. in his individual capacity by filing separate claim statement. As rightly observed by trial court, there is long delay of 2015 days and the petitioners have not explained each days delay for such long 2015 days with cogent and convincing

reasons. Even if the version of petitioners is accepted that they came to know only after passing of compromise decree i.e., after 10-12-2000, this application for condonation of delay of 2015 days is filed only in June, 2001 and there is no whisper in the affidavit at least for the delay from December, 2000 to June, 2001. Trial court after considering a decision of this court and the material on record held that the petitioners did not evince any interest and failed to explain delay for 2015 days which is extraordinary and dismissed the application.

I do not find any wrong appreciation of material nor wrong exercise of jurisdiction or wrong exercise of discretionary power to be interfered by this court under revisional powers.

On a scrutiny of material, I am of the considered view that trial court rightly dismissed the application and that there are no grounds to interfere with the findings of the lower court.

Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

As a sequel to the disposal of this revision, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI
KUMAR

Dated 17-3-2016.
Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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Dvs