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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ LA.APP. 44/2016

OM PRAKASH

..... Appellant

Through: Mr. B.D. Sharma, Advocate.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Ms. Jyoti Tyagi, Advocate for
Mr. Yeeshu Jain, Advocate for R-1.
Mr. Karan Sharma, Advocate for
R-2/DDA.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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12.07.2016

C.M. Appl. No. 5247/2016 (for delay)

1. By this application, the appellant seeks condonation of delay of 3098 days in filing of this First Appeal seeking enhancement of compensation. The reason given for seeking condonation of delay is that the appellant is a poor person and he came to know about getting of enhancement by other persons in January, 2016, and therefore, appellant has filed the present appeal. The relevant paragraphs of the application stating facts seeking condonation of delay are paragraphs 3 to 7 and these paragraphs read as under:-

“3. That since the only source of livelihood of the appellant is the agricultural land and the same stands acquire and the appellant is not having any other land in the village and for the

survival of his family, the appellant had shifted in Haryana and had taken the agricultural land on hired basis and occasionally visits the village Kakrola.

4. That when the appellant visited the Village Kakrola in the first week of January, 2016, he was informed by the other claimants of the village regarding the enhancement made by the Hon'ble High Court of Delhi in respect of their land and advised the appellant to file an appeal in the Hon'ble High Court of Delhi for further enhancement of the compensation in respect of his acquired land and prior to first week of January, 2016, the appellant was not in the knowledge of any appeal having been filed by other claimants of the village in the Hon'ble High Court of Delhi and the appellant was also not aware of the fact of filing any appeal in the Hon'ble High Court of Delhi for further enhancement of the compensation.

5. That the applicant/appellant thereafter contacted the Counsel in the first week of January, 2016 for filing the appeal in the Hon'ble High Court of Delhi and as such the accompanying appeal is being filed for further enhancement of the compensation.

6. That the Counsel thereafter applied for certified copy of the impugned order and the same became available on 02.02.2016.

7. That the delay of 3098 days in filing the appeal is neither intentional nor deliberate but due to lack of knowledge regarding the procedure to be followed for getting enhancement of compensation against the judgment/decreed passed by the Id. Trial Court.

2. I have dealt with an identical issue of condonation of delay in judgment in LA Appeal No. 66/2013 titled as ***Inder Singh v. Union of India*** and other connected cases decided on 8.7.2014. A ground such as not being able to contact the counsel or not being aware of right to file appeal or the fact that other persons have received higher compensation or that advice was given not to file the appeal, etc., are

not good grounds for condonation of huge delay in filing the appeal. The relevant paragraphs of the judgment in the case of ***Inder Singh (supra)*** are paragraphs 3 to 18 and these paragraphs read as under:-

3. Two grounds are therefore urged seeking condonation of delay (i) of not being able to contact the counsel and (ii) not being aware of right to file the appeal.

4(i) So far as not being aware of the right to file an appeal all that needs to be stated is that *ignorantia juris non excusat* i.e ignorance of law is not an excuse. In any case, I fail to believe that in today's date and age people are not aware of their legal rights of being entitled to file appeals against the judgments of the courts below.

(ii) So far as the fact that it is written that the appellant could not contact his counsel, the plea is a totally false plea because it is not stated as to who was the counsel who was sought to be contacted, and that why he could not be contacted, and in any case 2328 days delay is hardly a delay which can be condoned on such facts.

5. 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.

6. 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)

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

7. 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.

8. 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)

9. 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.

10. 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 resjudicata i.e finality of the judgments of the court below.

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

+ L.A. Appeal No.66/2013

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

C.M. No.18106/2013 (condonation of delay) in L.A. Appeal No.278/2013

13. I have already passed a detailed judgment above refusing to condone the delay by referring to three judgments of the Supreme Court.

14. In the present application, the reasons given for seeking condonation of delay of 2551 days are as under:-

“3. That after the decision of the learned Reference Court, the appellants contacted Ms. Sunita Jain, Advocate for preparation and filing of the present appeal. The ld. Counsel after having gone through the contents of the judgment as well as the file which was handed over by the appellants to the said counsel advised not to prefer any appeal before

this Hon'ble Court. The appellants acting upon the expert advice given by the said counsel did not prefer the appeal.

4. That the appellants recently came to know that some of the co-villagers whose lands were also acquired under the same award had preferred appeals under Section 54 of the Land Acquisition Act. Upon coming to know that co-villagers had filed appeals and their appeals have been allowed by the Hon'ble Court, the appellants contacted counsel Shri Deepak Khosla, Advocate, who advised them to prefer the appeal with an application seeking condonation of delay.

5. That the appellants could not prefer the appeal because of the wrong advice given by the counsel Ms. Sunita Jain, Advocate and the appellants had in fact acted upon the expert advice received by them.”

15. The only ground therefore pleaded is that the earlier counsel Ms. Sunita Jain did not advise filing of the appeal and therefore 'expert advice' was followed and ultimately this appeal was filed after delay of 2551 days. No reasons have been given as to why the so called 'expert advice' was not taken immediately after Ms. Sunita Jain, Advocate advised not filing the appeal. Even the affidavit of Ms. Sunita Jain, Advocate is not filed and no reasons or facts have been stated for the period which prevented getting of the second so called expert advice after the advice of Ms. Sunita Jain.

16. Learned counsel for the appellant has sought to draw the attention of this Court on the observations made by the Supreme Court in its order dated 18.2.2010 in Civil Appeal No.6899 of 2002 titled as **A. Vembusekaran Vs. Spl. Tahsildar, Namakkal** that every land holder must get identical compensation and therefore it is argued that delay must be condoned. The

observations which are relied of the Supreme Court in the case of **A. Vembusekaran (supra)** read as under:-

“Although, some of the land holders did not challenge the order passed by the Reference Court by filing appeal under Section 54 (1) of the Act and only one of them could approach this Court, in view of our conclusion that the appellant is entitled to get compensation @ Rs.10.25 per sq. ft., we are of the view that even those, who may not have been able to seek intervention of the High Court and this Court due to illiteracy, ignorance and financial incapacity should also get compensation at par with the appellant. Accordingly, we direct the Government of Tamil Nadu and its functionaries to pay compensation and other statutory benefits to other land holders at the same rate at which compensation etc will be paid to the appellant herein.”

17. In my opinion, the observations of the Supreme Court relied upon by the counsel for the appellants cannot help the appellants because they do not deal with the issue of condonation of delay under Section 5 of the Limitation Act, 1963 read with Order 41 Rule 1 CPC. I would with utmost humility like to state that in the observations relied upon by the appellants in the order of the Supreme Court in the case of **A. Vembusekaran (supra)** no reasoning is given and which is given in the three judgments of the Supreme Court which I have referred to in the judgment in L.A. Appeal No.66/2013 and which lay down the ratio so far as condonation of delay is concerned. Therefore, in my opinion, the observations relied upon on behalf of the appellant of the Supreme Court in the case of **A. Vembusekaran (supra)** cannot help the appellant.

18. In view of the above, there is no sufficient cause given for condonation of the huge delay of 2551 days in filing of the appeal. The application for condonation of delay is therefore dismissed.

3. Adopting the ratio in the case of *Inder Singh (supra)* and that the condonation of delay is prayed only on the ground that the appellant is a poor person and he came to know of filing of appeal by other persons, the said fact thus cannot be a good ground for condonation of delay.

4. The application is, therefore, dismissed.

LA.APP. 44/2016

Since the application for condonation of delay is dismissed, the present appeal itself is dismissed as time barred.

VALMIKI J. MEHTA, J

JULY 12, 2016

JK