

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 632 OF 1991
IN
FIRST APPEAL (ST.) NO. 11936 OF 1989

The State of Maharashtra
(through the Special Land
Acquisition Officer, Metro
Centre No.(II), Thane) .. Applicant/Petitioner
vs.
Shri. Balya Daji Patil
Since deceased by Legal Heirs
a) Ananta B. Patil and ors. .. Respondents

WITH
CIVIL APPLICATION NO. 633 OF 1991
IN

FIRST APPEAL (ST.) NO. 11936 OF 1989

The State of Maharashtra
through the Special Land
Acquisition Officer, Metro
Centre No.(II), Thane. .. Applicant/Petitioner
vs.
Shri. Balya Daji Patil .. Respondent

Mr. Yogesh Y. Dabke, Asst. Government Pleader for the
Applicant/Petitioner/Appellant.

CORAM : M. S. SONAK, J.
DATE : 04 JANUARY 2017.

P.C. :-

1] Heard Mr. Yogesh Dabke, learned Asst. Government Pleader
(AGP) for the applicant-State.

2] By Civil Application No.632 of 1991, the State applies for
condonation of delay of 468 days in preferring an appeal against the
land acquisition award dated 25 November 1987 made in Land
Acquisition Reference No. 61 of 1985.

3] Although, the appeal accompanied by the civil application seeking condonation of delay was instituted on or about 8 November 1989, for several reasons, which shall be borne from the Roznama the civil application seeking condonation of delay could not be taken up for consideration. This reason mainly relates to the steps to be taken by the applicant in the matter of service upon the respondents.

4] Even today, learned AGP points out that an affidavit of service has been filed on record, but therein it is admitted that respondent No. (c) and respondent No. (g) have expired and further steps are necessary to bring on record their legal representatives. The record indicates that the original respondent has long since expired and even the parties, now referred to as (c) and (g) were the legal representatives of the original respondent. At this stage, there is no point in adjourning this matter, which is pending since the year 1989, particularly since most of the other respondents have already been served. Despite service, such respondents are neither present nor are they represented.

5] Mr. Dabke submits that there is sufficient cause made out for condonation of delay. There was some delay in applying for the certified copy of the impugned award on account of heavy work load in the office of the advocate, who was handling the matter before the reference court and also since the papers were misplaced by the concerned clerk. Mr. Dabke submits that once the certified copy was obtained on 18 January 1989, a decision was taken to institute a review petition and some time was spent in pursuing the review petition. Thereafter, however, it was decided that it would be

appropriate if an appeal is preferred against the impugned order rather than the review being pursued. Ultimately, the review petition was withdrawn and the appeal came to be instituted. For all these reasons, Mr. Dabke submits that the delay of 468 days in preferring the appeal is liable to be condoned. He submits that the delay is not for any *mala fide* reasons and therefore, the same constitutes sufficient cause.

6] With the assistance of Mr. Dabke, I have perused the application seeking condonation of delay as well as the record. Although, there may be some explanation insofar as the period spent post 18 January 1989, which is the date on which the applicant obtained the certified copy of the award dated 25 November 1987, there is virtually no explanation whatsoever for the delay of over thirteen months in applying for certified copy of the impugned award. The impugned award in the present case, was made on 25 November 1987. There is nothing on record to indicate that the State or advocate representing the State was not present, at the stage, when the award was made or pronounced by the reference court. In these circumstances, there was necessity of some good and proper explanation as to why there was delay of almost thirteen months in applying for certified copy of the award. The application for certification copy, in the present case, was made only on 26 December 1988.

7] The only reason set out in the application seeking condonation of delay, in the aforesaid regards, reads thus:

“II. The Land Acquisition Reference No. 61 of 1985 was decided on 25-11-1987. The application for certified copy was made however, on 26-12-1988. The Petitioner submits that due to heavy work load since the papers in Land Acquisition Reference No.61 of 1985 were misplaced by the concerned Clerk and therefore, the application for certified copy remained to be made. The Petitioner submits that immediately after realizing that the certified copy was not applied for in Land Acquisition Reference No.61 of 1985, an application for certified copy was made on 26-12-1988.”

8] To say that there was “heavy work load” or that the papers in the Land Acquisition Reference No. 61 of 1985 “were misplaced by the concerned clerk”, without furnish of any particulars whatsoever, hardly constitutes any sufficient cause. The aforesaid explanation is not at all clear as to which authority was faced with “heavy work load”. There are no particulars about the misplacement of the case papers and the clerk, who was responsible for such alleged misplacement. In any case, even if the case papers were really misplaced, nothing prevented the concerned authorities from at least applying for certified copy of the impugned award particularly since, the State was represented, at the stage, when the impugned award was made and was pronounced.

9] In ***Pundlik Jalam Patil (Dead) By Lrs. Vs. Executive Engineer, Jalgaon, Medium Project and anr.***¹, the Hon'ble Supreme Court has held that pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. Prompt and timely payment of compensation to the landlosers facilitating their rehabilitation/resettlement is equally an integral part of public

1 (2008) 17 SCC 448

policy. One should not forget the basic fact that what is acquired is not the land but the livelihood of the landlosers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under section 5 of the Limitation Act. Dragging the landlosers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. This serves no public interest. Though, the State on its instrumentalities are the applicants seeking condonation of delay they may be entitled to certain amount of latitude but the law of limitation is same for citizen and for governmental authorities. It would be a different matter where the Government makes out a case where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it. In a given case, if any, such facts are pleaded and proved they cannot be excluded from consideration. In a case with which we are concerned, no such facts have been either pleaded or proved.

10] In *Union of India and ors. vs. Visveswaraya Iron and Steel Ltd.*², the Hon'ble Supreme Court declined to entertain the special leave petition filed almost one year after the receipt of copy of the judgment. The explanation that delay was on account of the file having moved through various departments was not accepted.

2 1987 (supp) Supreme Court Cases 192

11] In *Special Land Acquisition Officer (SIP) and anr. Vs. Jose Prazeres DE Piedade Pinto r/o. Old Market and ors.*³, the learned Single Judge of this Court has held that delay cannot be condoned in a matter relating to land acquisition case, merely on the ground that the matter involved public monies. On such basis, the Government cannot seek condonation of delay as a matter of right. It is necessary for the Government to furnish necessary and satisfactory explanation for such delay. In case the delay has occurred on account of either willful acts on the part of the concerned officer/s or for any other reason, the same has to be stated and some material produced on record in support thereof. Mere statements regarding the movement of the file from one office to the other office, from one table to the other table cannot be construed as satisfactory explanation for the delay in filing the appeal.

12] In *Registrar of Companies Vs. Rajshree Sugar & Chemicals Ltd. and ors.*⁴, the Hon'ble Supreme court has held that though some latitude has to be shown to the Government in deciding the question of delay, that does not give a licence to the officers of the Government to shirk their responsibility to act with reasonable expedition.

13] In *Basawaraj and anr. Vs. Special Land Acquisition Officer*⁵, the Hon'ble Supreme Court at paragraphs 9 and 15 has observed thus:

“9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word

3 2006(4) Mh.L.J. 318

4 (2000) 6 SCC 133

5 (2013) 14 SCC 81

“sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. Therefore, the word “sufficient” embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”. However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee, Mata Din v. A. Narayanan, Parimal v. Veena and Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai.)

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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 bona fide 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”.

14] In ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and ors.***⁶, the Hon'ble Supreme Court has *inter alia* laid down the following guidelines for considering an application for condonation of delay:

“(i) ...
...
...

(xiv) *An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

(xv) *An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

(xvi)

(xvii) *The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”*

15] In ***Postmaster General and ors vs. Living Media India Limited and anr.***⁷, the Hon'ble Supreme Court declined to condone the delay of 427 days in filing special leave petition by observing thus:

“28. *Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology*

⁶ (2013) 12 SCC 649

⁷ (2012) 3 SCC 563

of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. *In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.*

30. *Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”*

16] In this case, the impugned award was made on 25 November 1987. On the grounds of pendency of this appeal, no compensation has been paid to the landlosers. It must be noted that when the State resorts to compulsory acquisition, in many cases, the livelihood of the landlosers also stands acquired. Therefore, it is imperative that the compensation is paid to the landlosers at the earliest. On account of such casual approach on the part of the State in instituting the appeals after considerable delay and thereafter, not even taking proper steps to effect service upon the respondents, the landlosers have been deprived of compensation since 1987.

17] In this case, even if some liberal approach is to be adopted, I find that there is no explanation or in any case, there is no sufficient

cause shown for the delay of almost thirteen months in applying for certified copy of the impugned award. The over all delay in the present case is of 468 days. The impugned award was made in the year 1987. Considerable time has elapsed even in the matter of effecting service upon the respondents. Even if all these aspects are ignored, from the material on record, I am satisfied that no sufficient cause has been shown in the matter of condonation of delay.

18] Accordingly, the civil application seeking condonation of delay hereby dismissed. As a consequence, First Appeal (St.) No. 11936 of 1989 is also dismissed. Civil application No. 633 of 1991 does not survive and accordingly, the same is also disposed of.

(M. S. SONAK, J.)

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