

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

And

THE HON'BLE MR.JUSTICE N.SESHASAYEE

CMP.No.8410 of 2017

in

W.A.No.SR32713 of 2017

1.The Government of Tamil Nadu,
represented by its Secretary,
Housing and Urban Development Department,
Secretariat, Chennai-600 009.

2.The District Revenue Officer,
Kancheepuram,
Kancheepuram District.

3.The Special Tahsildar (Land Acquisition),
Maraimalainagar Scheme,
Kattankolathur.

.. Petitioners/Appellants

vs.

1.S.Rajendran,

2.Chennai Metropolitan Development Authority (CMDA),
Rep. by its Member Secretary,
Egmore, Chennai-600 008.

.. Respondents

Prayer in CMP.No.8410 of 2017: Civil Miscellaneous Petition filed under Section 5 of the Limitation Act to condone the delay of 2741 days in filing the Writ Appeal against the order dated 16.09.2009 made in W.P.No.17210 of 2008.

Prayer in W.A.No.SR32713 of 2017: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 16.09.2009 made in W.P.No.17210 of 2008.

For Petitioner/
Appellants : Mr.A.N.Thambidurai,
Special Government Pleader

For Respondents : Mrs.Vedavallikumar for R1
Mr.N.Sampath for R2

ORDER

(Order of the Court was made by **M.SATHYANARAYANAN, J.**)

The official respondents in W.P.No.17210 of 2008, which came to be allowed by this Court on 16.09.2009, are the appellants. The first respondent herein filed the above said writ petition praying for issuance of a Writ of Certiorari to quash G.O.Ms.No.134, Housing and Urban Development Department dated 23.04.1998 and consequent letter of the District Revenue Officer, Kancheepuram dated 06.09.2006 and to pass further orders. The learned Judge has taken note of the fact that the above said Government Order was quashed in a writ petition filed by

Tvl.S.Udayasankar, Indirani and Karunakaran, vide order dated 26.04.2007 made

in W.P.No.9531 of 1998 and considering the submission made by the learned Additional Government Pleader that steps are being taken to file appeal against the said order, has allowed the said writ petition, vide order dated 16.09.2007 and quashed the impugned Government Order and challenging the same, the official respondents therein had filed this writ appeal in W.A.No.SR32713 of 2017, with a delay of 2741 days in filing the writ appeal.

2. Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the petitioners/appellants has drawn the attention of this Court to the affidavit filed in support of the petition seeking condonation of delay and would submit that the delay had occurred on account of conflicting opinion given by different law officers of the State regarding feasibility of filing appeal and for getting legal opinion, it took considerable time and further on account of coming into force of the new Act, namely the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [Central Act 30 of 2013], the delay had occurred and it cannot be considered as neither willful nor wanton. It is the further submission of the learned Special Government Pleader appearing for the petitioners/appellants that Tvl.Uttamchand Galada, Vasanth Bala Galada and Manish Galada had filed writ petitions in W.P.Nos.10236 of 1998, 7110 of 1999 and 9437 of 2006, challenging the very same Government Order and all the writ

petitions were dismissed by this Court and hence prays for condonation of delay and disposal of the writ appeal on merits.

3. *Per contra*, Mrs.Vedavalli Kumar, learned counsel appearing for the first respondent/writ petitioner would submit that the learned Single Judge, in the impugned order allowing the writ petition, has placed reliance upon the order dated 26.04.2007 made in W.P.No.9531 of 1998, in and by which the very same Government Order came to be quashed and though in the impugned order allowing the writ petition, this Court has recorded the submission of the learned Additional Government Pleader that steps will be taken to file appeal against the said order, the fact remains that no such challenge has been made and therefore, the order passed in W.P.No.9531 of 1998 had become final. Insofar as the delay in filing the appeal is concerned, it is submitted by the learned counsel appearing for the first respondent/writ petitioner that the delay is huge and enormous and the only reason cited is on account of conflicting opinion given by different law officers of the State as to the feasibility in filing the appeal and further on account of coming into force of the new Act, namely the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and it cannot be hardly said as satisfactory reason for condonation of such huge delay and prays for dismissal of this petition with costs.

4. This Court has considered the rival submissions and also perused the entire materials placed before it.

5. In *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and Others* [2013 (11) Scale 418], delay in filing of the appeal and condonation of the same came up for consideration and the Hon'ble Supreme Court of India, after referring to catena of judgments rendered by it, has culled out the principles as well as guidelines and it is relevant to extract the same:

“15. From the aforesaid authorities the principles that can broadly be culled out are:

- i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
- ii) The terms “sufficient cause” should be understood in their 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.
- iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
- v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
- vi) 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.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) 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.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard 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.

b) 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.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

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

6. The petitioners/appellants, in para 6 of the affidavit filed in support of this petition, had stated the reason that delay had occurred on account of conflicting legal opinion given by different law officers of the State regarding feasibility of filing appeal against the order and also on account of new Act coming into force, namely the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [Central Act 30 of 2013] and in the considered opinion of this Court, the delay is huge and enormous.

7. The Hon'ble Supreme Court of India in the decisions in ***Union of India v. Ram Charan [AIR 1964 SC 215]***, ***P.K.Ramachandran v. State of Kerala [(1997) 7 SCC 556]*** and ***Katari Suryanarayana v. Koppiseti Subba Rao [(2009) 11 SCC 183]*** observed as follows:

“26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.”

8. The delay is admittedly enormous and on account of belated filing of appeal, valuable right also accrued in favour of the first respondent/writ petitioner and at this distant point of time, it cannot be set at nought by condoning the delay and there is no sufficient, plausible and satisfactory reason put forth for condoning such huge delay.

9. In the light of the reasons assigned above, the Civil Miscellaneous Petition in CMP.No.8410 of 2017 is dismissed and consequently, WA.No.SR32713 of 2017 is rejected. No costs.

[M.S.N., J.] [N.S.S.J., J.]
14.09.2017

Index : Yes / No
Internet : Yes / No
jvm

To

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N.SESHASAYEE, J.

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