



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Tuesday, the Twenty Fifth day of September Two Thousand and Eighteen

PRESENT

WEB COPY

The Hon'ble Mr. Justice C.V.KARTHIKEYAN

CMP(MD) Nos.4790, 4791 and 4792 of 2016
IN
AS(MD) No.74 of 2005

THE SPECIAL TAHSILDAR,
ADI DRAVIDAR WELFARE DEPARTMENT,
DEVAKKOTTAI,
SIVAGANGAI DISTRICT.

... PETITIONERS (in all CMPs)

Vs

1 KARUPPAN CHETTIAR (DIED)
2 K.ANNAMALAI
3 K.CHOKKALINGAM
4 AZHAGAMMAL
5 K.KARUPPIAH
6 K.PALANIAPPAN
7 MEENAKSHI
8 ALAMELU
9 K.MEENAKSHI SUNDARAM

... RESPONDENTS (in all CMPs)

Prayer in CMP(MD)No.4790/2016:

This Civil Miscellaneous Petition is filed under section 5 Limitation Act, to Condone the delay of 1880 days in filing the application to set aside the order of dismissal passed by this Honourable Court in A.S.No.74 of 2005 dated 14.12.2011.

Prayer in CMP(MD)No.4791/2016 :

This Civil Miscellaneous Petition is filed under Order 22 Rule 9 of Civil Procedure Code to set aside the order of dismissal passed by this Honourable Court in A.S.(MD)No.74 of 2005 dated 14.12.2011 and restore the same.

Prayer in CMP(MD)No.4792/2016 :

This Civil Miscellaneous Petition is filed under order 22 Rule 4 of Civil Procedure Code to bring on record the Respondents 2 to 9 herein as Legal Representatives of the deceased/claimant in A.S.(MD) No.74 of 2005.

Prayer in AS(MD)No.74/2005 :

<https://hcservices.ecourts.gov.in/hcservices/>

Appeal Suit is filed under section 96 of the Civil Procedure Code against the Judgment and Decree of the Learned Sub Judge of



Sivagangai in LAOP.1/1999 dated 15.06.2004.

ORDER: These Civil Miscellaneous Petitions are coming on for hearing, and upon the perusing the affidavits and petitions filed, and upon hearing the arguments of Mr.J.Gunaseelan Muthiah, Additional Government Pleader for Petitioner and of Mrs.K.R.Shivashankari for Respondents 2 to 9, this court made the following Order:

" C.M.P.(MD) No.4790 of 2016 has been filed by the Special Tahsildar, Adi Dravidar Welfare Department, Devakkottai, Sivagangai District, under Section 5 of the Limitation Act to condone the delay of 1880 days in filing the petition to set aside the order of dismissal passed by this Court in A.S.No.74 of 2005, dated 14.12.2011.

2.In the affidavit filed in support of the said petition, it had been stated that the land belonging to the claimant had been acquired for the purpose of issuing house site Patta to the landless people, belonging to Most Backward Community. A reference was made under Section 18 of the Land Acquisition Act, against the award granted for acquisition of land. The Land Acquisition Tribunal/Subordinate Judge, Sivagangai, passed an order in L.A.O.P.No.1 of 1999 dated 15.06.2004, enhancing the compensation amount.

3.Against the said Judgment, this appeal in A.S.No.74 of 2005 had been filed. Interim Stay was granted in C.M.P.(MD)No.5401 of 2005, on 14.11.2005, on condition that the appellant deposits one half of the enhanced amount together with interest within a period of 12 weeks. The condition was not complied with. The claimant, therefore, filed M.P.(MD)No.1 of 2007 to vacate the order of stay. The order of interim stay was vacated by order dated 20.03.2007. Thereafter, the one half amount as directed amounting to Rs.23,77,298/- was deposited on 22.10.2010 to the credit of L.A.O.P.No.01 of 1999 on the file of Subordinate Court, Sivagangai. In the meanwhile, the claimant, Karuppan Chettiar, had died on 24.12.2009 leaving behind his legal representatives. The legal representatives were not brought on record and consequently, this Court dismissed the appeal on 14.12.2011.

4.It had been stated that there was a change in the Government Advocate and steps were not taken to restore the appeal. It was also stated that the order of dismissal was not communicated to the appellant. It was stated that it came to be known that the appeal was dismissed, only when Execution Petition was filed by the claimants and the order of dismissal was produced in that Court. It had been stated that the delay of 1880 days in filing application must be condoned. C.M.P(MD).No.4791 of 2016 had been filed to set aside order of dismissal in A.S.No.74 of 2005 dated 14.12.2011. C.M.P.(MD).No.4792 of 2016 had been filed to bring on record the



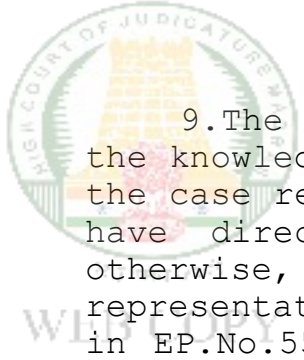
legal representatives of the deceased claimant as respondents 2-9 in A.S.No.74 of 2005.

5. The respondents in C.M.P(MD).No.4790 of 2016 filed the counter affidavit. In the counter they have stated that an award was passed on 15.06.2004 in L.A.O.P.No.1 of 1999 by Subordinate Court, Sivagangai. The Government filed appeal in A.S(MD).No.74 of 2005, challenging the award. The claimant Karuppan Chettiar filed CRP.No.1004 of 2005 claiming interest on the solatium payment. The legal representatives filed a petition to implied themselves on the death of Karuppan Chettiar. This was allowed in M.P.(MD)Nos. 1 to 3 of 2010 on 21.12.2010. The legal representatives also filed a memo in A.S.No.74 of 2005 informing about the death of Karuppan Chettiar and the details of the legal representatives.

6. Even, otherwise the petitioner who was the respondent in CRP (MD)No.1004 of 2005 was aware of the death of Karuppan Chettiar and the details of legal representatives. Karuppan Chettiar had also filed E.P.No.55 of 2007 for recovery of balance amount, which was not deposited by the petitioner / appellant herein. Even in that petition, the legal representatives were brought on record. It was therefore stated that the petitioner knew about the death of Karuppan Chettiar and about the details of legal representatives and consequently reasons attributed are false to the knowledge of the petitioner. It was stated that the petition to implead the legal representatives should have been filed and since they were not filed, the appeal was dismissed by this Court. It had also been stated that the reasons advanced for the delay cannot be accepted and that the petition must be dismissed.

7. Heard arguments advanced by Mr.J.Gunaseelan Muthiah, learned Additional Government Pleader for the petitioner and Mr.K.R.Siva Shankar, learned counsel for the respondents.

8. The only reason given to explain 1880 days of delay in filing application to set aside order of dismissal of the first appeal is that there was a change in the Government Advocate and the fact that the first appeal was dismissed on 14.12.2011 was not communicated to the petitioner. This reason cannot be accepted. The petitioner being the appellant in the appeal suit has a continuous duty to be vigilant and he cannot shift the blame on the Government Advocate. It is seen from the counter that the petitioner herein namely, The Special Tahsildar, Adi-Dravidar Welfare Department, Devakottai, Sivagangai District, was a party in C.R.P.No.1004 of 2005 and in E.P.No.55 of 2007 in both of which proceedings the legal representatives of Karuppan Chettiar was impleaded, having known about the death of Karuppan Chettiar, a responsibility of thrust on the petitioner to bring this to the knowledge of the Government Advocate. On the other hand the petitioner blames the Government Advocate for not bringing to his notice. The progress in A.S.(MD)



9.The petitioner had the sole responsibility for bringing to the knowledge of the Government Advocate the further developments in the case regarding the death of the claimant. As Tahsildar, he would have direct knowledge about the death of the claimant. Even otherwise, the fact that Karuppan Chettiar died and that his legal representatives had been impleaded in C.R.P.(MD)No.1004 of 2005 and in EP.No.55 of 2007 are facts which the deponent of the affidavit cannot deny. It has also been stated in the counter affidavit that even in this appeal suit, a memo had been filed informing the appellant about the death of Karuppan Chettiar and giving details about the legal heirs. The petitioner has deliberately shifted the blame on the Government Advocate. That cannot be accepted and on that one reason alone, this petition must suffer an order of dismissal.

10.The reasons given to condone the delay of 1880 days which is nearly 6 years have not been properly explained. There is a touch of malafide writ large in the affidavit filed in support of the petition. The petition does not deserve any consideration and consequently it is dismissed.

11.In the result, the petition in C.M.P(MD).No.4790 of 2016 is dismissed. No Costs.

12. Consequently, C.M.P(MD)Nos.4791 and 4792 of 2016 are also dismissed. No Costs".

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-II)

TO

1. THE SUBORDINATE JUDGE,
SUBORDINATE COURT, SIVAGANGAI.
2. THE SPECIAL TAHSILDAR,
ADI DRAVIDAR WELFARE DEPARTMENT,
DEVAKOTTAI, SIVAGANGAI DISTRICT.

- + 1 CC TO Mr.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 86781
- + 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 86762

DATED : 25.09.2018

ORDER

CMP(MD) Nos.4790 to 4792/2016 in
AS(MD) No.74 of 2005

Given direction etc., as stated
within.