



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Wednesday, the Fourteenth day of November Two Thousand Eighteen

WEB COPY

PRESENT

The Hon`ble Mr.Justice S.S.SUNDAR
and
The Hon`ble Mr.Justice C.SARAVANAN

CMP(MD) No.3504 of 2018
IN
WA(MD) No.SR7624 of 2018

- 1.THE STATE OF TAMIL NADU,
THROUGH ITS DISTRICT COLLECTOR,
THOOTHUKUDI DISTRICT.
- 2.THE REVENUE DIVISIONAL OFFICER
THOOTHUKUDI.
- 3.THE PRINCIPAL SUBORDINATE JUDGE,
THOOTHUKUDI.

... PETITIONER/APPELLANTS

Vs

M.R.PONNU RENGAMANNAR,

... RESPONDENT/RESPONDENT

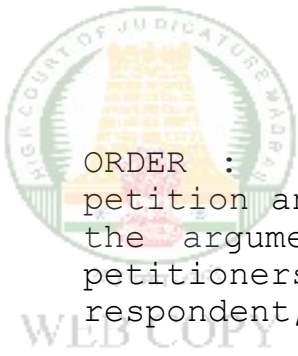
Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay of 296 days in filing the above Writ Appeal against the order dated 27.03.2017 made in WP(MD)No.15796 of 2014 and thus render justice.

PRAYER IN WA(MD) No.SR7624 of 2018:-

To set-aside the order passed in WP(MD).No.15796 of 2014 dated 27.03.2017 on the file of this Hon'ble High Court, allow the appeal.

Prayer in WP(MD). 15796/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records of 2nd Respondent in Award 1/2007- 2008 dated 04.08.2007 and quash the same and direct to the respondents 1 & 2 to initiate fresh land Acquisition of Petitioners land as per the provisions of The Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 30 of 2013 within a time frame to be fixed by this Hon'ble Court and pay petitioner Fair compensation as per new act.



ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.A.THIYAGARAJAN, Government Advocate for the petitioners and of Mr.T.S.R.VENKATARAMANA, Caveator for the respondent, the court made the following order:-

[Order of the Court made by **S.S.SUNDAR, J.**]

This petition is filed to condone the delay of 296 days in filing the above writ appeal, against the order of this Court in W.P.(MD)No.15796 of 2014, dated 27.03.2017.

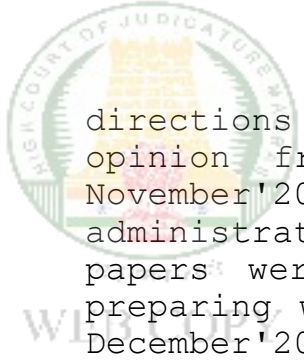
2.Heard learned Government Advocate appearing for the petitioners / appellants and the learned Counsel appearing for the respondent.

3.The petitioners are the appellants in the appeal and the respondents in the writ petition. As against the Award, dated 04.08.2007, passed by the second petitioner herein in the land acquisition proceedings initiated under the Land Acquisition Central Act, writ petition came to be filed by the first respondent herein.

4.It is stated that the land belonged to the respondent was acquired in 2004 and that the Award came to be passed on 04.08.2007. Since, the compensation was not paid to the respondent herein within five years from the date of Award, the respondent herein filed the writ petition to quash the Award, dated 04.08.2007 and to direct the first and second petitioners herein to initiate fresh land acquisition proceedings as per the provisions of "The Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 30 of 2013. Since the said writ petition was allowed, the above appeal came to be filed with the delay condonation petition.

5.In the affidavit originally filed in support of the delay condonation petition filed by the petitioners, unfortunately, no reason is found explaining the delay and, therefore, the petitioners herein have now filed a better affidavit explaining the delay. In paragraph 4 of the better affidavit, the delay has been explained in the following lines:-

"I submit that in the above writ petition, order was reserved on 21.03.2017 and delivered on 27.03.2017 and was received by our office on 21.04.2017. The papers were send to higher officials for further action. As per directions of higher officials, we have sought for opinion from the Government Advocate in May'2017 and there at his office, the papers got mixed up with the other bundles and could not be traced despite efforts. After hectic efforts, the same could be tranced only in the month of October'2017 and thereafter, the learned Government Advocate gave his legal opinion as it is not fit case for appeal. On receipt of said opinion, we have forwarded the same to the higher officials and as per



directions of higher officials, once again we sought for second opinion from the Special Government Pleader in the month of November'2017. On receipt of the legal opinion, papers were send for administrative sanction and after getting administrative sanction, papers were handed over to the Special Government Pleader for preparing writ appeal and the same was made ready in the month of December'2017. Thereafter, papers were handed over to the Clerk attached to the office of Government Pleader in the month of January'2018. I submit that it is seems that he had misplaced the said bundle along with other bundles. I submit that on the other hand, when the writ petitioner approached us and insisted to implement order, immediately we approached Government Pleader office and we enquired about the stage of writ appeal and thereafter, we came to know that Clerk attached to the office of Government Pleader office had not presented papers and further he had misplaced the bundle. I submit that on our request, the said bundle was traced after hectic efforts in the month of February'2018 and the same was presented with the Registry."

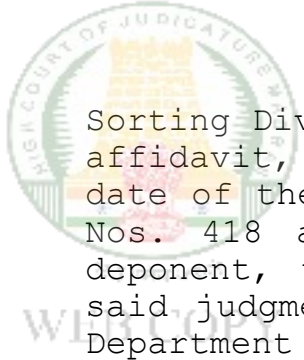
6.The learned Counsel for the respondent has filed a detailed counter affidavit refuting the averments made in the affidavit filed in support of the petition for condoning the delay. Having regard to the explanation that is offered by the petitioner, it is contended by the respondent that the petitioners have stated mere administrative reasons for the delay, ignoring the valuable right of the respondent to get compensation pursuant to the acquisition of the land by exercising the sovereign power of the Government.

7.It is further stated that in view of latches, delay in this case cannot be condoned. Inasmuch as the affidavit itself would show that earlier the Government was advised not to file any appeal, this petition explaining the delay only on account of administrative reasons, it is contended that there is no reasonable cause for the delay. The learned Counsel for the respondent further submitted that there is no bona fide in the reasons stated in the affidavit filed in support of the petition. The learned Counsel for the respondent also relied upon the judgment of the Lahore High Court in the case of **Madan Gopal vs Malawa Ram**, reported in **AIR 1923 Lahore 96**. Wherein, the Lahore High Court has held that the Court is not bound to show indulgence to a litigant, who is not prompt to seeking his remedy.

8.The learned Counsel for the respondent also relied upon yet another judgment of the Honourable Supreme Court, in the case of **Office of the Chief Post Master General and others vs Living Media India Limited and another**, reported in **(2012) 3 SCC 563**, wherein, the Honourable Supreme Court had an occasion to consider whether sufficient reasons have been stated for condoning the huge delay of 427 days in filing the appeal. The Honourable Supreme Court has held as follows:

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

"11) We have already extracted the reasons as mentioned in the "better affidavit" sworn by Mr.Aparajeet Pattanayak, SSRM, Air Mail



Sorting Division, New Delhi. It is relevant to note that in the said affidavit, the Department has itself mentioned and is aware of the date of the judgment of the Division Bench of the High Court in LPA Nos. 418 and 1006 of 2007 as 11.09.2009. Even according to the deponent, their counsel had applied for the certified copy of the said judgment only on 08.01.2010 and the same was received by the Department on the very same day. There is no explanation for not applying for certified copy of the impugned judgment on 11.09.2009 or at least within a reasonable time. The fact remains that the certified copy was applied only on 08.01.2010, i.e. after a period of nearly four months. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the person in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps.

12) It is not in dispute that the person concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. 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 bonafide, 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 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.

13) 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 bonafide 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 government departments. The law shelters



everyone under the same light and should not be swirled for the benefit of a few. 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."

9.It is true that the Honourable Supreme Court has time and again held that the Government bodies and instrumentalities of the State cannot be shown any special indulgence, unless they have acceptable reasons for the delay. However, in the present case, the additional affidavit filed in support of this petition contains reasons and we cannot ignore the reasons assigned in the affidavit as unreasonable or unfair. It is pertinent to mention that this is a case where the acquisition which was completed in 2007 is ultimately challenged for non-payment of compensation within the period of five years from the date of Award. The question is regarding applicability of Section 24(2) of the Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 30 of 2013. In case, the land acquisition proceedings is started once again under the new Act, serious prejudice will be caused to the State Government, not only in terms of compensation method, but also with reference to the escalation of price due to the passage of 14 years of time. The writ petition itself is filed only in 2014.

10.The explanation offered in the affidavit has to be considered. The facts narrated are not disputed. This Court is of the view that the delay is reasonable and it has been explained adequately and properly. The *bona fides* of the petitioners cannot be doubted. In that view of the matter, this petition is allowed and the delay is condoned, however, on condition that the petitioners pay a sum of Rs.5,000/- as costs to the respondent within a period of two weeks from the date of receipt of a copy of this order.

11.Registry is directed to number the appeal immediately upon the learned Government Advocate file an affidavit or letter showing proof or reporting compliance and if the papers are otherwise in order.

sd/-
14/11/2018

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

1. THE DISTRICT COLLECTOR,
STATE OF TAMIL NADU,
THOOTHUKUDI DISTRICT.

2. THE REVENUE DIVISIONAL OFFICER
THOOTHUKUDI.

3. THE PRINCIPAL SUBORDINATE JUDGE,
THOOTHUKUDI.

COPY TO:-

THE SUB ASSISTANT REGISTRAR,
AE SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CMP (MD) No.3504 of 2018
IN
WA (MD) No.SR7624 of 2018
Date :14/11/2018

AE/VR MMS/SAR4/03.12.2018/6P/5C