



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2018

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.R.P. (MD) .No.616 of 2016

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1. The State of Tamilnadu,
Rep. through its the District Collector,
Ramanathapuram.
2. The Sub-Collector,
Paramakudi.
3. The Tahsildar,
Paramakudi.
4. The Divisional Engineer,
State Highways, Paramakudi,
Ramanathapuram.
5. The Assistant Divisional Engineer,
State Highways, Paramakudi. ... Petitioners/Petitioners/
Appellants

Vs.

1. C.Ramakrishnan ... 1st Respondent/1st Respondent/
Plaintiff
2. The Commissioner,
Paramakudi Municipality,
Paramakudi. ... 2nd Respondent/2nd Respondent/
6th Defendant

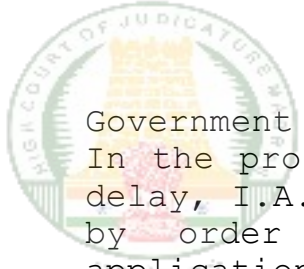
PRAYER : Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the order dated 25.11.2014 made in I.A.No.61 of 2014 in A.S.No.3 of 2009 passed by the learned Principal District Judge, Ramanathapuram by allowing this Civil Revision petition.

For Petitioners : Mr.M.Karuppasamy,
Government Advocate.

For Respondents : No appearance.

O R D E R

O.S.No.39 of 2005 on the file of the Sub Court, Paramakudi, was instituted by the first respondent herein seeking the relief of declaration and permanent injunction. The suit was decreed on 16.11.2006. Challenging the same, A.S.No.3 of 2009 was filed. The appeal was allowed to be dismissed for default on 18.09.2009. The



Government filed an application for restoration of the appeal. In the process, there was a huge delay. Seeking condonation of the delay, I.A.No.61 of 2014 came to be filed. The first appellate Court by order dated 25.11.2014 dismissed the said Interlocutory application. Challenging the same, this Civil Revision petition has been filed.

2. Though the plaintiff has been served and his name is also printed in the cause list, he has not chosen to enter appearance either in person or through counsel.

3. It is seen that the matter relates to encroachment over the Highways. Encroachment in Highway poramboke is objectionable. The Hon'ble Supreme Court in the decision reported in (2005) 3 S.C.C. 752 (State of Nagaland V. Lipok AO) has held as follows:-

"14. In G.Ramegowda V. Spl. Land Acquisition Officer((1988) 2 S.C.C. 142) it was held that no general principle saving the party from all mistakes of its counsel could be laid. The expression "sufficient cause" must receive a liberal construction so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay. In litigations to which Government is a party, there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected, but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals. The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts, omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it. It was, therefore, held that in assessing what constitutes sufficient cause for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the



Government. Government decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have 'a little at the joints'. Due recognition of these limitations on governmental functioning - of course, within reasonable limits - is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of governmental functioning is procedural delay incidental to the decision-making process. The delay of over one year was accordingly condoned.

15. It is axiomatic that decisions are taken by officers/agencies proverbially at a slow pace and encumbered process of pushing the files from table to table and keeping it on the table for considerable time causing delay- intentional or otherwise - is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression 'sufficient cause' should, therefore, be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the Courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal, needed prompt action should be pursued by



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the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while the State is an impersonal machinery working through its officers or servants.

16. The above position was highlighted in State of Haryana V. Chandra Mani((1996) 3 S.C.C. 132) and Special Tahsildar, land Acquisition V. K.V.Ayisumma ((1996) 10 S.C.C. 634). It was noted that adoption of strict standard of proof sometimes fails to protract (sic) public justice, and it would result in public mischief by skilful management of delay in the process of filing an appeal."

This Judgment was cited with approval in the decision reported in (2017) 12 S.C.C. 840(K.Subbarayudu V. LAO).

4. Therefore, the delay that has occasioned in this case will have to be viewed with some indulgence. This Court called upon the District Collector to file a report in this regard fixing the liability on the persons who are responsible for the delay. Accordingly, the District Collector, Ramnad, has filed Action taken report. It is seen that the then Government Pleader was related to the plaintiff and therefore, he had not taken any steps for getting the Judgment and Decree. The subsequent Government Pleader also had not acted expeditiously in getting the copies.

5. Taking all these aspects, the order impugned in this Civil Revision petition is set aside. The Civil Revision petition stands allowed, accordingly.

6. The Court below shall number the restoration application and allow the same also. A.S.No.3 of 2009 on the file of the Principal District Judge, Ramnad, shall stand restored to file, thereafter. The District Collector, Ramnad, is directed to submit a report to the office of the Advocate General of Tamil Nadu so that the erring law officials are not reappointed as Government counsel in future. No costs.

Sd/

Assistant Registrar(Crl Side)

/True copy/

Sub Assistant Registrar(CS-III)



To

1. The Principal District Judge,
Ramanathapuram.

2. The District Collector,
Ramanathapuram.

3. The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

+1cc to Mr.M.KARUPPASAMY, Advocate, SR.No.90514

+1cc to M/s.Special Government Pleader, SR.No. 90818

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