

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2019

CORAM

THE HON'BLE Ms. JUSTICE P.T.ASHA

C.M.P.No.9851 of 2018
C.R.P.No.SR37031 of 2018

The Estate Officer-cum-Deputy Collector
Office of Deputy Collector(Revenue)
Revenue Complex, Kamaraj Salai, Saram Post
Pondicherry

...Petitioner

Vs

Adimoolam(Died)
Rep.by Legal Heir representatives
Respondents 2 to 8.

- 1.Muniammal @ Gavoury
- 2.Vanaja
- 3.Varshini
- 4.Latha
- 5.Sudha
- 6.Dharanie
- 7.Sooryakumar

... Respondents

PRAYER: Civil Revision Petition is filed under Section 5 of Limitation Act to condone the delay of 6220 days in filing the above Civil Revision Petition against the judgment and decree dated 05.01.2010 in M.A.No.6/2004 on the file of II Additional District Judge, Pondicherry.

For Petitioners : Mr.N.Mala
Additional Government Pleader

For Respondents : Mr.P.Veena Suresh
for R 1 to 4 & 7
Mr.G.Masilamani, Senior Counsel

for Mr.R.Thiagarajan for R5 & R6.

ORDER

The above Civil Miscellaneous petition is filed for condoning the delay of 6220 days in filing the above Civil Revision Petition challenging the judgment and decree dated 05.01.2010 in M.A.No.6/2004 on the file of the II Additional District Judge, Puducherry.

2. The reason for condoning the delay has been stated in paragraph No.16 of the affidavit filed in support of the petition which reads as follows:

“16. I submit that after receipt of the certified copy of the impugned judgment and decree dated 05.01.2010 in M.A.No.6/2004 on the file of II Additional District Judge, Pondicherry, the files were routed through various hierarchy of the Government for obtaining opinion as to the feasibility of preference of appeal and the appeal has been presented before this Hon'ble Court, however, there is a delay in filing this appeal. The delay is neither wilful nor wanton.”

3. The brief facts which are necessary to dispose of the above C.M.P. are as follows:

4. The lands measuring a total extent of 2 hectare 67 acres and 16 cents belonging to one Thiru.M.Kanagasabapathy was proposed to be

acquired by the Government of Pondicherry for construction of Class-IV quarters for their employees. Section 4(1) notification was issued on 24.02.1976 and thereafter the Section 6 declaration was made on 20.07.1977 and ultimately, an award was passed on 29.06.1982.

5. It is the case of the revision petitioner that when the possession was taken on 28.05.1990 by the Land Acquisition Officer, the respondent was not in possession of the property concerned. Thereafter between the dates of taking a decision and when the possession was taken over by the Deputy Collector (Land Acquisition), Pondicherry, the deceased respondent has encroached into the property. This fact was known when the lands were being handed over to the requisitioning body. Thereafter the proceedings under the Public Premises Act was initiated against the said Adhimoolam. The notice under Section 5(A)(2) of the Public Premises (Eviction of Unauthorized Premises Act, 1971) dated 02.11.1998 was issued to the deceased Adhimoolam and the eviction was ordered by an order dated 11.12.1998. This was challenged by the said Muniammal in M.A.No.42 of 1998 on the file of the Principal District Judge by judgment and decree dated 11.08.2000. The Principal District Judge remitted the matter back to the respondent namely the Estate Officer for fresh enquiry into the encroachment/possession by the said Adhimoolam.

6. This order was challenged by the said Adhimoolam in C.R.P.No.339 of 2001 before this Court. The CRP was dismissed by order dated 26.07.2001 however with an observation to the Estate Officer cum Deputy Collector, who is revision petitioner herein, that he shall dispose of the matter on merits uninfluenced by the observations made therein. Thereafter, the Estate Officer once again directed the eviction by his order dated 25.08.2004 which has been taken on challenge before the II Additional District Judge, Pondicherry by the legal representative of Adhimoolam (who had by then died) in M.A.No.6 of 2004 dated 05.01.2010. The learned II Additional District Judge at Pondicherry was pleased to allow the appeal and set aside the eviction passed against the said Adhimoolam.

7. The learned Judge also directed the property in question to be transferred to the appellants after adopting the usual procedure within 3 months from the date of judgment. Challenging this order, a revision has been filed nearly 8 years after the passing of the order and CMP No. 9851 of 2018 has been filed to condone the said delay of 6,220 days. A detailed counter has been filed by the respondents, challenging the said application and stating that the delay is inordinate and a deliberate attempt on the part of the petitioner to scuttle the order passed by the learned II Additional District Judge, Pondicherry.

8. Mrs.Mala, learned Counsel who has appeared on behalf of the revision petitioner/Estate Officer would contend that on merits, the revision petitioner has a good case since the order that has been passed by the II Additional District Judge, Pondicherry is unworkable in view of the fact that there is no law under which re-conveyance of property already acquired can be taken and there is no provision equivalent to Section 48B of the Tamil Nadu Land Acquisition Act in the Pondicherry Act. She would also contend that the only method is to withdraw the land from acquisition and this is a very complicated and labourious procedure. She would also rely on the judgment in **2005 3 SCC 752 (STATE OF NAGALAND vs. LIPOK AO AND OTHERS)** wherein the Hon'ble Supreme Court has held that the issue of delay vis-a-vis Government Law Department should be treated with more empathy. She would lay emphasis on the observations of Hon'ble Supreme Court in paragraph Nos. 8, 12, 13 & 15. She would therefore pray that considering the fact that there is merits in revision and the delay has to be condoned.

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9. Per Contra Mr.G.Masilamani, learned Senior Counsel appearing on behalf of the respondents would contend that the delay in the instant case is inadvertent and further the contention of the revision petitioner that the respondent is an rank encroacher and has no right is belied by the

reference under Section 30 of the Acquisition Act wherein the Deputy Collector has included the respondent Adhimoolam as the 10th respondent under the Column name of interested person. He would therefore contend that the contention that the land has been encroached is totally unbelievable. He would rely upon the judgment of the Hon'ble Supreme Court in the case of **2012 3 SCC 563(POSTMASTER GENERAL AND OTHERS vs. LIVING MEDIA INDIA LIMITED AND ANOTHER)** in respect of his argument that the delay cannot be condoned.

10. Heard the counsels on either sides and on perusing the material on record it is seen that the judgment which is the subject matter of revision is a judgment which has been passed after a remand. The revision petitioner's case is that the respondent is an encroacher who has come under the possession of the property subsequent to the handing over of possession on 28.05.1990 and before the lands were handed over to the requisitioning body.

11. From the proceedings of the Deputy Collector dated 02.01.1991, it appears that there is no reference to the Department to which possession was handed over by P.W.3. However, there is a reference that the said Adhimoolam made representation on 28.08.1990 to the Joint Secretary, Revenue, Pondicherry which clearly shows that the said

Adhimoolam could have been in possession of the property prior to date of taking of possession. That apart, the document which has been produced as the proceeding under which the property has taken possession does not contain details of either the date or the award number and this document does not inspire the confidence of this Court. The documents which have been produced by the respondent before the District Judge dates back even in to the year 1982. Therefore, even on merits the revision petitioner has not made out a convincing case.

12. The Hon'ble Supreme Court in the judgment relied upon by respondent 2012 3 SCC 563 in paragraph No.29 has held as follows:

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 or 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 law.

13. In the light of this judgment of the Hon'ble Supreme Court and

considering the facts which is more or less identical to the facts of the case on hand, this Court is constrained to dismiss the application for condonation of delay.

14. Consequently, the Civil Revision Petition is dismissed. No costs.

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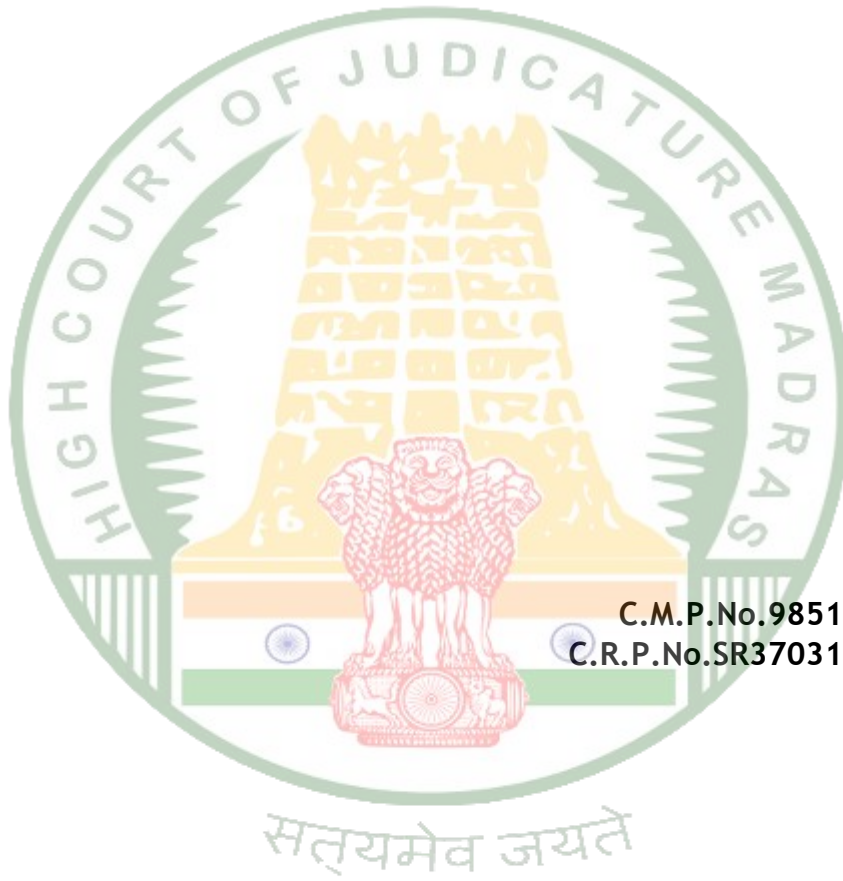
mrm/ssb
Index:Yes/No
Internet:Yes/No
Speaking Order/Non-speaking Order



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P.T.ASHA,J.,

ssb/mrm



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