

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (NPD)Nos.2067, 2069, 2074, 3057,3058, 3060 and 3061 of 2014

CRP (NPD) No. 2067 of 2014

1. District Forest Officer,
Salem and Namakkal
2. State of Tamil Nadu rep. by
District Collector, Namakkal. ... Petitioners

Versus

Muthusamy ... Respondent

CRP (NPD) No. 2067 of 2014:- Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order passed by the Additional District Judge, Fast Tract Court, Namakkal in I.A. No.146/2006 in unnumbered CMA of 2006, dated 23.06.2011.

CRP (NPD) No. 2067 of 2014

For Petitioners : Ms. Thanga Vadhana,
Additional Government Pleader (Forest)
For Respondent : No appearance

COMMON ORDER

The petitioners have filed these batch of Civil Revision Petitions, aggrieved by the order of the learned Additional District Munsif, Fast Track Court, Namakkal, dismissing the application filed by them to condone the delay in filing an appeal, as against the order passed by the

Forest Settlement Officer, Athur, Namakkal district. The delay ranges between 973 to 1099 days.

2. In all these cases, it is the case of the petitioners that the subject lands were acquired by the Government as early as in the year 1955 and they were declared as Reserve Forest Lands. But, it is the case of the petitioners that without getting sanction / approval of the Government, the Forest Settlement Officer on his own accord, invited claims from various parties and by the impugned order passed by him, excluded the lands of the claimants from the Reserve Forest Area.

3. As seen from the affidavit filed in support of the petition to condone the delay, since the subject acquisition was done by the Government as early as in the year, 1955, there was a difficulty for the Government to trace all the records to enable them to file an appeal, within the prescribed period fixed under the Tamil Nadu Forest Act.

4. Heard the learned Additional Government Pleader appearing for the petitioners. Notices have been duly served on the respondents in all these Civil Revision Petitions and the names of the respondents in all these Civil Revision Petitions have been printed in the cause list. Today, despite service of notice, no one has entered appearance on behalf of the respondent in all CRPs.

5. In an identical matter, this Court in a batch of Civil Revision Petitions in CRP No.4153 of 2011, by order dated 29.11.2013, allowed the Civil Revision Petitions and quashed the order of the learned District Judge dismissing the petition to condone the delay. The order dated 29.01.2013 reads as follows:-

7.It is seen from the records that originally, the Settlement Officer was directed by the authorities concerned on 25.05.1998 to assess the lands measuring an extent of 8855 acres or 3583.62 hectares of lands which are in occupation of third parties. In that order, it was specifically directed to exclude the portion of the lands which are not in occupation of third parties. It is contended on behalf of the revision petitioners that based on this order, without any assessment, the Settlement Officer on a misconception, assessed even the lands which were not in occupation by third parties and passed orders even in respect of those lands. Therefore, it is contended that an opportunity has to be afforded to the petitioners to question the correctness or otherwise of the order passed by the Settlement Officer. It is to be pointed out that this Court is not going in to the merits or otherwise of the order passed by the Settlement Officer in this batch of Civil Revision Petitions. This Court is only considering as to whether the reasons assigned by the Department for condonation of delay in filing the Civil Miscellaneous Appeal is justified and convincing.

8. It is seen from the applications filed for condonation of delay, the petitioners mainly urged that the Settlement Officer is not right in not excluding the portion of the lands which were not occupied by any third parties and therefore, they must be given an opportunity to contest the case on merits. Even though the Civil Miscellaneous Appeals have to be filed within 30 days from the date of receipt of the copy of the order passed by the Settlement Officer, it is stated that the orders have been received only on 04.07.2002 and 29.11.2002 in batches and thereafter, the department took efforts to verify the same with the records which resulted in the delay in filing the appeals.

9. In so far as plea of laches is concerned, it is stated that the declaration in respect of the lands have been made on 12.05.1954, notification was issued on 19.05.1965 under Section 6 of the Act fixing the date for filing the claims on or before 18.08.1955, however, notification under Section 16 could not be issued since the lands were un-surveyed and the Forest Settlement Officer did not take

any steps to submit a report after completing the enquiry under Section 10 of the Act. Therefore, from the date of notification, the lands vested with the Forest Department. However, after declaration of the lands, third parties have started encroaching the lands without any right. In these circumstances, unless an opportunity is given to the Petitioners/Forest Department to contest the case on merits, ownership over the forest lands will be claimed by third party encroachers.

10. The settlement officer has passed independent orders in favour of the respondents herein and according to the petitioners, those orders were received by them in two batches. Thereafter, the department retrieved the old records for verifying the correctness of the order passed by the Settlement Officer and this has led to the delay in filing the appeals. It is also seen from the applications filed in support of the petition for condoning the delay that identical reasons were verbatim given for each of the petitions. It is true that mere administrative delay or following up with the procedures for filing the case will not normally be condoned by the Courts and the Department has to be treated on par with ordinary litigants. However, in this case, since the settlement officer has passed various orders and despatched it in two batches, the reasons assigned by the petitioners for condonation of delay has to be accepted as justifiable.

11. It is brought to the notice of this Court that out of 1263 orders passed by the Settlement Officers, the Department has filed Civil Miscellaneous Appeal. As against the cases where the Court below dismissed the applications for condonation of delay, the present Civil Revision Petitions have been filed. However, in respect of 502 cases, the Court below itself has condoned the delay and the appeals are being heard. In none of those 502 cases, the respondents herein have not filed any Civil Revision Petition before this Court against the orders allowing the applications for condonation of delay. Thus, it is evident that in respect of 502 claims, the applications filed by the Department was allowed and the Civil Miscellaneous Appeals are pending in respect of the very same subject matter i.e., Naraikinaru II Forest Block. In such circumstances, this Court is of the view that the petitioners should be permitted to contest the remaining cases also on merits by condoning the delay in filing the Civil Miscellaneous Appeals. This fact ought to have been considered by the court below instead of dismissing the applications filed under Section 5 of the Limitation Act.

12. During the course of argument, the learned Government Advocate (Forest) brought to the notice of this Court the subsequent events. As per Section 10 (ii) of the Forest Act, if any claim is rejected wholly or in part, the claimant may prefer an appeal to the District Court within 30 days provided the Government may, on just and reasonable cause being shown, extend the period for filing such appeal. In this case, the competent authority namely the Principal Chief Conservator of Forest, Chennai in his proceedings in

C.No.752/69820/2004 dated 05.05.2005 extended the period for filing an appeal, the relevant portion of the order is extracted hereunder:-

"I wish to add that the delay in filing appeal was caused due to the following reasons:-

1. The Range Officer, Rasipuram has been attending the enquiry conducted by the Forest Settlement Officer and all the claims were received by the Forest Settlement Officer without any documentary evidence. Further, the Range Officer had to object the claims of the petitioners then and there.

2. The orders have been passed by the Forest Settlement Officer in different names of claimant on different dates during 2002.

3. Passed orders have been belatedly handed over to the District Forest Officer for the cases from FSC No.1 to 621/2002 on 04.07.2002 and remaining orders 622/2002 to 1263/2002 on 29.11.2002 after expiry of time limit for appeal (i.e.,) 30 days from the orders. Out of 1263 orders passed during 2002, 91 claim orders are yet to be received by the District Forest Officer.

4. As these issues is dragging on over 50 years and also the Forest Settlement Officer has delivered the orders on 1263 claimants, the cases details were under verification with oldest records.

5. The District Forest Officers/Range Officers were also engaged with Protection and Developmental activities and continuous engagement with routine administrative work.

6. Large numbers of claims were made and these claims are to be analysed carefully with evidence of records produced by the public.

7. Even though the Range Officer has objected, the Forest Settlement Officer, Attur has passed orders without considering the Acts and Rules. Once the stipulated time for appeal was over during 1955, the Forest Settlement Officer has reported that no claims were received in response to Section 6 proclamation.

8. The Forest Settlement Officer has not followed the procedure laid down in Tamil Nadu Forest Act, 1882, once the process completed, he can not act at his own discretion. But, he has received claims and admitted all the claims (i.e.,) 1263 numbers with an extent of 1205 hectares which is against the Tamil Nadu Forest Act, 1882, and Forest (Conservation) Act, 1980 and orders of Supreme Court in W.P. 202/95 dated 12.12.1996.

9. The District Forest Officer has been perusing the 1263 claims admitted by the Forest Settlement Officer and he has been taking action for filing the appeal. The District Forest Officer has also taken action against the persons who are

responsible for the delay. Action has been perused to collect the relevant particulars to file necessary appeal in the appropriate court. Action has been perused to prepare necessary draft appeal in the District Courts.

3. The District Forest Officer has consulted the Government Pleader regarding the appeal against the orders of the Forest Settlement Officer, Attur. The Government Pleader opined that there was no provision to file as a single case, since the orders were issued by the Forest Settlement Officer, Attur on different claimants on different dates. So that appeals have to be prepared against each order of the Forest Settlement Officer, Attur. In this procedure, delay is inevitable on administrative grounds. Now the District Forest Officer has prepared the appeal against the orders of the Forest Settlement Officer and it has to be filed before the Hon'ble District Court, Namakkal and Salem. The list of cases is enclosed herewith.

4. As per the Section 10 (2) of the Tamil Nadu Forest Act, 1882 if such claim is rejected wholly or in part, the claimant may within 30 days from the date of the order, prefer an appeal to the District Court in respect of such rejection only. Provided that the Government may on just and reasonable cause for the same being shown, extend the period for such appeal. Further period as may seem proper, and an order or endorsement under the signature of one of the Secretaries to Government shall be sufficient authority for the said Court to entertain such appeal beyond the limit above specified".

I request that orders may kindly be issued for condoning the delay in filing the appeal petitions before the District Courts at Namakkal and Salem."

13. Thus, the Government, in exercise of the powers conferred under Section 10 (ii) of the Act accepted the reasons assigned by the petitioners for condonation of delay in preferring the Civil Miscellaneous Appeals before the District Court.

14. Next, the learned Government Advocate (Forest) brought to the notice of this Court an unreported order dated 05.04.2011 passed by this Court in CRP (NPD) No. 1298 of 2008. In that case, the Court below has condoned the delay of 413 days in filing an appeal against which the claimant has filed the Civil Revision Petition contending that the Court below has no power to condone the delay in filing an appeal as per Section 10 (2) of the Act. It was also contended that Section 5 of the Limitation Act cannot be made applicable to the case arising under the Tamil Nadu Forest Act, which is a special enactment. This Court, after considering the rival submission, dismissed the civil revision petition wherein in para Nos. 10, 11, 12 and 13, it was held as follows:-

"10. A reading of the aforesaid provision makes it clear that the said provision is applicable only to an

appeal that is preferred by the claimant against a rejection of his claim in whole or in part. In this case, admittedly, the appeal has been filed by the District Forest Officer, being aggrieved by the allowing of the claim made by the claimants. This is not an appeal against rejection of a claim. The appellant is not the claimant, but the appellant is only the District Forest Officer and therefore, Section 10 (2) of the Act has no applicability to the facts of this case. Therefore, the said contention of the learned counsel for the petitioners cannot be countenanced.

11. As far as the contention of the learned counsel for the petitioners that the court below has not properly considered the reasons assigned by the first respondent for condoning the delay is concerned, it has to be pointed out that in the affidavit filed in support of the petition to condone the delay, it has been stated that the concerned clerk who was incharge of the matter was not available in time and the file involved in the above case was misplaced and it cannot be traced out in time and therefore the appeal could not be filed in time. The said reasons have been disputed by the petitioners herein in their counter.

12. The court below has pointed out that under Section 10 (3) of the Act, no time limit has been fixed for filing an appeal on behalf of the Government by the Forest Officer appointed under Section 4. Further, the court below, by placing reliance upon the decision in *The President, Sathyamangalam Hill Tribes, Multi Purpose Co-operative Society Ltd., Coimbatore vs. The Deputy Registrar, Co-operative Societies, Erode Circle, Erode and another* (2006 (4) CTC 243), has held that the interest of the Government as well as the Public has to be protected and there is no reason to doubt the averments contained in the affidavit. Thus the court below has accepted the reasons averred by the first respondent for condoning the delay.

13. When the Court below has exercised its discretion in the light of the legal principle laid down in *The President, Sathyamangalam Hill Tribes, Multi Purpose Co-operative Society Ltd., Coimbatore vs. The Deputy Registrar, Co-operative Societies, Erode Circle, Erode and another* (2006 (4) CTC 243), this Court is not inclined to interfere with the finding of the Court below. When admittedly, the claim of the petitioners over an extent of land has been allowed and the right of the Government is affected, an opportunity should always be given to the Government to establish its case on merits

and this case cannot be thrown out at the threshold. Courts have to decide the dispute on merits by full and complete adjudication and not to decline the relief on technicalities. Therefore, this Court does not find any reason to interfere with the order passed by the Court below.

15. As held by the decision of this Court mentioned above, in the present case, reasons have been assigned for the delay and therefore, the court below ought to have given an opportunity to the petitioners to prosecute the appeals instead of dismissing the applications for condonation of delay on technicalities.

16. The learned Government Advocate for the respondents also relied on an order passed by the District Collector, Namakkal on 09.09.2010. A perusal of the Order dated 09.09.2010 of the District Collector would indicate that in respect of the very same area namely Naraikinaru, the District Collector has sent a proposal to the Government of Tamil Nadu, represented by its Secretary, Revenue Department to allot the un-surveyed portion of land measuring 904 hectares or 2233 acres to the landless poor. This Court cannot go in to the merits of the order passed by the District Collector, Namakkal. However, in view of this subsequent event, this Court is of the view that the contentions urged on behalf of the revision petitioners herein has to be accepted and the delay in filing the Civil Miscellaneous Appeals have to be condoned so as to enable the petitioners to agitate all these points before the Court below.

17. The learned Government Advocate appearing for the petitioners relied on the decision of the Honourable Supreme Court reported in **(State (NCT of Delhi) vs. Ahmed Jaan) 2008 Criminal Law Journal 4359** wherein the Honourable Supreme Court held that when the explanation offered by the petitioner is acceptable and when the court below has no occasion to deal with such explanation, the delay can be condoned. In the present case also, the subsequent developments which have taken place has not been brought to the notice of the Court below for being examined and on that ground also, the delay in filing the Civil Miscellaneous Appeal has to be condoned.

18. As rightly pointed out by the learned Government Advocate appearing for the petitioners, the Settlement Officer has passed individual orders in favour of the claimants/respondents herein for which separate appeals were required to be filed which took considerable time for the Department. It was also contended that apart from their routine duties, the staff of the Department were also made to verify the voluminous records for being compared with the correctness of the order passed by the Settlement Officer and in that process the delay has occurred. Such explanation offered by the petitioner is a plausible explanation and it was not a mere

administrative delay adduced by the petitioners. Furthermore, when already 502 applications filed by the Department have been allowed and the Civil Miscellaneous Appeals are pending, interest of justice demands that the delay in filing the present Civil Miscellaneous Appeals also has to be condoned so that all the appeals can be taken up for hearing and disposal by the Court below.

19. In the result, the Civil Revision Petitions are allowed as prayed for. Consequently, the applications filed by the revision petitioners under Section 5 of the Limitation Act in unnumbered Civil Miscellaneous Appeals are allowed. No costs. Connected miscellaneous petitions are closed."

6. In the instant case also, similar reasons have been given by the petitioners for condonation of the delay and this Court is also satisfied with the said reasons for not filing the appeal, within the prescribed period under the Tamil Nadu Forest Act. Therefore, the impugned orders in these batch of Civil Revision Petitions are hereby set aside and all the Civil Revision Petitions are allowed, as prayed for. No costs.

29.08.2019

Index: Yes/ No
Internet: Yes/No
Speaking Order: Yes/no
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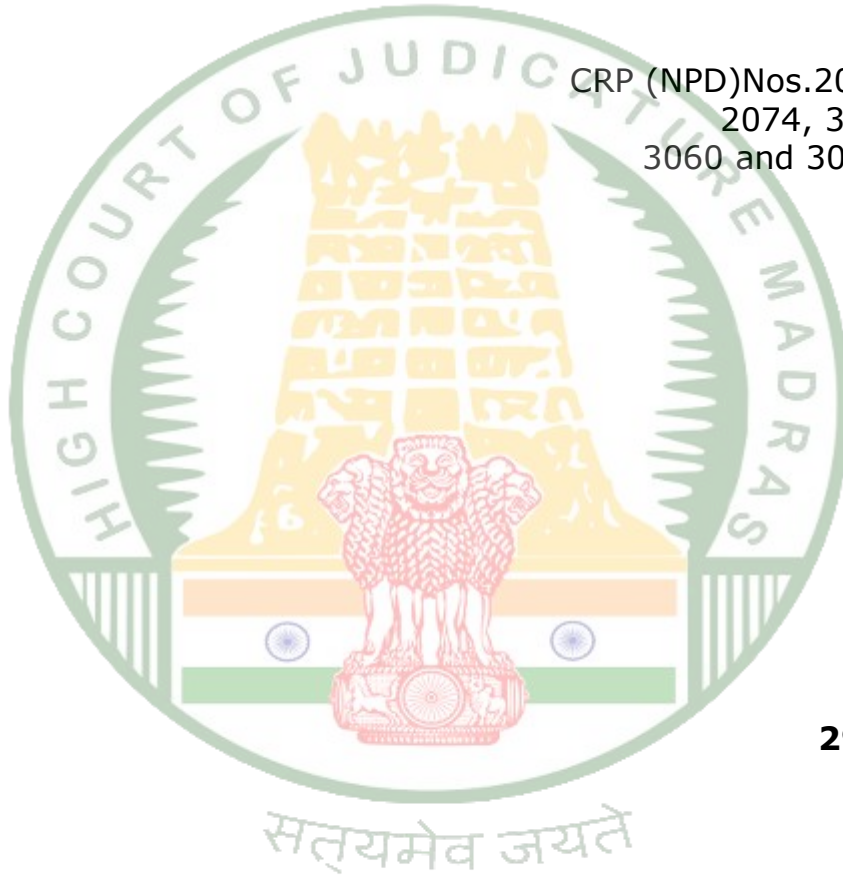
To
The Additional District Judge, Fast Tract Court,
Namakkal.

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CRP (NPD) No.2067 of 2014 (Batch)

ABDUL QUDDHOSE, J.

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