



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Wednesday, the Thirteenth day of March Two Thousand and Nineteen
CORAM:

The Hon'ble Mrs. Justice J.NISHA BANU

CMP(MD). No.2471 of 2017
IN

CMP(MD). No.13185 of 2004
IN

SA(MD).No.SR6148 of 2001
(SA(MD).No.SR49628 of 2007)

1 THE DISTRICT COLLECTOR

PERAMBALUR THIRUVALLUVAR DISTRICT NOW THE
DISTRICT COLLECTOR TRICHY DISTRICT.

2 THE SPECIAL TAHSILDAR(ADW), THURAIYUR OFFICE, PUDHU STREET,
MATHURAPURI, THURAIYUR, TRICHIRAPPALLI DISTRICT.

... Petitioners/Appellants

Vs

1 M.S.PALANIYANDI (DIED)

2 RAJAMMAL

3 SUDHA

4 BALAMURUGAN

5 SUBATHIRA

... Respondents/Respondents

Prayer in CMP(MD). No.2471 of 2017:-

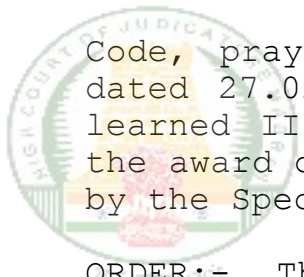
Civil Miscellaneous Petition is filed under section 5 of the Limitation Act, praying this Hon'ble Court to condone the delay of 2493 days in filing the restore application to set aside the order in M.P.(MD)No.13185 of 2004 in SA(MD).No.SR6148 of 2001 (S.A.SR.(MD)No.49268 of 2007) dated 12/04/2010 which was dismissed for default for non-payment of batta.

Prayer in CMP(MD). No.13185 of 2004 :-

Civil Miscellaneous Petition is filed under section 5 of the Limitation Act, praying this Hon'ble Court to condone the delay of 601 days in filing the above second appeal.

Prayer in SA(MD).No.SR6148 of 2001 (SA(MD).No.SR49628 of 2007) :-

Second Appeal is filed under section 100 of Civil Procedure



Code, praying this Hon'ble Court against the judgment and decree dated 27.02.1999 made in L.A.O.P.No.1 of 1996 on the file of the learned II Additional Subordinate Judge, Trichirappalli, modifying the award dated 27.12.1995 made in Award No.RCA NO.1317 of 1992 made by the Special Tahsildar (ADW), Thuraiyur.

ORDER:- This Petition is coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr. J.GUNASEELANMUTHIAH, GOVERNMENT PLEADER for the Appellants, this Court made the following order:

This petition has been filed by the petitioners seeking to condone the delay of 2493 days in filing a petition to set aside the order dated 12.04.2010 dismissing C.M.P.No.13185 of 2004, which was filed to condone the delay of 601 days in filing S.A(MD)No.SR 49628 of 2007.

2.It is stated in the petition that the lands belong to one M.S.Palaniyandi situate in Survey Nos.42/3C, 42/4, 42/5B and 47/5C, Thuraiyur Village, Thuraiyur Taluk, admeasuring 2.88 acres, were acquired for the purpose of providing free house sites for Adi Dravidar people. The second petitioner / second appellant passed the award in Award No.1 of 95-96, dated 27.12.1995. Being dissatisfied with the same, the said M.S.Palaniyandi filed L.A.O.P.No.1 of 1996 before the Court below seeking enhancement of compensation. The Court below, without considering the documents and other materials, has enhanced the market price of the acquired land, by Judgment and decree, dated 27.02.1999. Against which, the petitioners / appellants filed S.A.No.S.R.6148 of 2001, with a delay of 601 days and in order to condone the same, C.M.P.No.13185 of 2004 has been filed. Thereafter, on establishment of Madurai Bench of Madras High Court, the above S.A.No.S.R.6148 of 2001 was transferred to this Bench and renumbered as S.A(MD)No.SR 49268 of 2007. During pendency of the same, the sole respondent died and vide order dated 06.10.2007, made in M.P(MD)Nos.1 to 3 of 2007, his legal heirs were brought on record as respondents 2 to 5. Since batta was not paid for the respondents 2 to 5, C.M.P.No.13185 of 2004 was dismissed on 12.04.2010. Since there is a delay of 2493 days in filing a petition to set aside the same, the present petition has been filed.

3.In this petition also, since the petitioners/appellants have not paid batta for the second respondent, this petition was dismissed as against the second respondent, vide order, dated 14.12.2017.

4.Despite notice being served on the respondents 3 to 5 and their names having been printed in the cause list, there is no representation on behalf of the respondents 3 to 5, either in person or through Counsel.

5.Heard the learned Counsel appearing for the petitioners / appellants and perused the documents placed on record.



6. On a perusal of records, this Court finds that the petitioners/ appellants have not assigned any valid reason to condone such huge and inordinate delay. In fact, in the affidavit filed in support of the condone delay petition, it has been stated as follows:

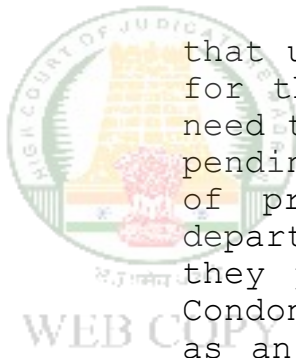
"2..... ... After the formation of the Hon'ble Madurai Bench of Madras High Court, the cases were transferred to Madurai. Originally, the Civil Miscellaneous Petition No.13185/2004 in S.A.S.R.No.6148 of 2001 was filed before the Hon'ble High Court for condonation of delay in filing the Second Appeal.

3. I submit that after transferring the case to Hon'ble Madurai Bench of Madras High Court, the application for condonation of delay of 601 days in filing the Second Appeal in C.M.P.(MD)No.13185 of 2004 in S.A.S.R.No.6148 of 2001 was renumbered as C.M.P.(MD)No.3 of 2006. After renumbering the application for condonation of delay in C.M.P.(MD)No.3 of 2006 in S.A.S.R.No.49268 of 2007 was listed before this Hon'ble Court. This Hon'ble Court ordered notice to the respondents. Due to frequent transfer of the staff of the petitioner's office the intimation letter about the paying of the batta was mingled with other files and could not be located. Hence the petitioner is not aware of the payment of batta. In the mean time due to nonpayment of batta, the case in C.M.P.(MD)No.13185 of 2004 in S.A.S.R.(MD)No.49268 of 2007 was listed before this Hon'ble Court on 12.04.2010 and same was dismissed for default for nonpayment of batta on same date. Due to communication gap between the petitioner office and the Government Pleader Office, the batta has not paid".

7. A perusal of the above statement of the petitioners / appellants would clearly show that the reason assigned by them is not acceptable. The Hon'ble Supreme Court in ***The Office of the Post Master General and Others v. Living Media Private Limited and Another*** reported in (2012)3 SCC 563, which was filed by the Department of Central Government to condone the delay, has held as follows:

"12. 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".

8. In view of the above, this Court is of the opinion that the petitioners / appellants have not explained the delay to the satisfaction of this Court. Accordingly, this petition is dismissed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar (CS)

TO

THE II ADDITIONAL SUBORDINATE JUDGE, TIRUCHIRAPPALLI.

ORDER DATED : 13/03/2019

=====
ORDER
=====

CMP (MD) . No.2471 of 2017

Giving direction and etc.
as stated within.

KK/SAR/23.04.2019/ 4P- 2C