

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

AND

HON'BLE SRI JUSTICE K. LAKSHMAN

I.A. No. 1 OF 2019

IN/AND

L.A.A.S. No.93 OF 2019

COMMON ORDER: (per Hon'ble Sri Justice K. Lakshman)

Hyderabad Metropolitan Development Authority (HMDA) filed this petition to condone the delay of 1318 days in preferring the appeal.

2. The petitioner herein preferred the aforesaid appeal under Section 54 of the Land Acquisition Act (for short 'the Act') challenging the order dated 02.09.2015 passed in LAOP No.1322 of 2008 by the Special Sessions Judge for trial of Cases under SCs & STs (POA) Act, 1989 - cum - VII Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar. According to the petitioner, the trial Court enhanced the compensation by almost more than 5½ times.

3. It is the contention of the petitioner that an Award was passed by the Land Acquisition Officer granting compensation of Rs.10,00,000/- per acre in favour of respondents - claimants in respect of their agricultural land admeasuring Acs.1.10 guntas in Survey Nos.283 and 287, situated at Shamshabad Village and Mandal, Ranga Reddy District, which was acquired for the purpose of Outer Ring Road (ORR) Project. Feeling aggrieved by the said award, dated 24.11.2007, the respondents - claimants filed an application for

enhancement of compensation and the same was referred to Civil Court under Section 18 of the Act. The Reference Court vide judgment and decree, dated 02.09.2015 in LAOP No.1322 of 2008 enhanced the compensation from Rs.10,00,000/- to Rs.1200/- per square yard with 30% solatium and 12% additional market value on the enhanced compensation and also interest @ 9% per annum from 26.11.2007 till realization.

4. According to the petitioner, they have acquired the land for the purpose of ORR Project to ease the traffic congestions. The entire acquisition was in the interests of public. The enhancement is more than five times which is not reasonable. Hence, they have preferred the appeal challenging the said judgment and decree in LAOP No.1322 of 2008 with delay.

5. It is contended by the petitioner that after passing the judgment and decree, their office filed Copy Application for obtaining certified copies. The connected Court file was sent to the High Court, the appeal is being filed as per the photostat copy of the judgment and decree. The same was put to scrutiny and legal opinion whether to file an appeal or not. Thereafter, the authorities have taken a decision to prefer an appeal. After bifurcation of the combined State of Andhra Pradesh, there is acute shortage of staff in HMDA and the entire office is administered with 1/3rd staff alone. Therefore, for processing the case file as well as for preferring the appeal including getting the permissions and obtaining the legal opinion, time has been

consumed and thereby a delay of 1318 days was caused in preferring the appeal.

6. It is relevant to note that the petitioner herein has also filed an additional affidavit on 17.10.2019, wherein it is contended that the then Standing Counsel in lower Court sent opinion along with judgment and decree on 01.03.2016 and, thereafter, the Land Acquisition Officer addressed a letter on 16.05.2016 to the then Standing Counsel, High Court for filing appeal. But, the Standing Counsel resigned on 22.06.2016, and as per the proceedings No.983/CLC/2012 (Suppl), dated 06.07.2016, another Standing Counsel was given charge until further orders. As per proceedings, dated 19.02.2018, the ORR Project files were allotted to some other Standing Counsel. On 08.11.2018, the said ORR files were again handed over to the present Standing Counsel.

7. It is further contended by the petitioner that their office received the notice on 19.11.2018 in Execution Petition No.178 of 2018 from the VII Additional District Judge's Court regarding execution of said decree in LAOP No.1322 of 2008. On receipt of the said notice, the petitioner enquired with the present Standing Counsel and found that the file was not traceable and was missing. Meanwhile, on 19.12.2016 the then Land Acquisition Officer was transferred and no regular LAO was appointed till 04.01.2018. Thereafter the deponent of the affidavit filed in support of the present petition took charge as LAO. While pursuing the matter, she was

deputed as Assistant Returning Officer in the Parliament Elections from March to May, 2019 and after return, she applied for fresh certified copies on 14.06.2019 which were received on 11.07.2019 and thus there is delay of 1318 days in preferring the appeal.

8. With the above said contentions, the petitioner prayed to allow the application by condoning the delay of 1318 days in preferring the appeal.

9. Respondent Nos.1 and 2 filed counter affidavit opposing the delay of 1318 days on the ground that the delay caused was inordinate and the petitioners did not explain day-to-day delay caused in preferring the appeal. More over, the reasons given by the petitioner to condone the delay are not satisfactory and the petitioner did not constitute "sufficient cause" to condone the inordinate delay of 1318 days. The respondents would further contend that the acquisition of the land was long back, due to which they are put to irreparable loss. Therefore, with the said contentions, the respondents sought for dismissal of the application for condonation of delay.

10. Heard Mr. Y. Rama Rao, learned Standing Counsel for the petitioner - HMDA and Mr. C. Naresh Reddy, learned counsel for the respondents.

11. On perusal of the record, it is not in dispute that the land of the respondents was acquired by the petitioner in the year 2006 and the Land Acquisition Officer passed an Award on 24.11.2007. Feeling aggrieved by the same, the respondents - claimants made an

application to the Land Acquisition officer, who in turn referred the matter to the Civil Court under Section 18 of the Act. The Reference Court, on consideration of evidence both oral and documentary, passed a judgment on 02.09.2015 in LAOP No.1322 of 2008 enhancing the compensation at Rs.1200/- per square yard from Rs.10,00,000/- per acre with 30% solatium and 12% additional market value on the enhanced compensation and also interest @ 9% per annum from 26.11.2007 till realization.

12. The learned Standing Counsel for the petitioner - appellant would contend that the delay of 1318 days was caused in preferring the appeal and the said delay was beyond their control which is neither wilful nor wanton but for the reasons stated above viz., change of Standing Counsel, not posting regular Land Acquisition Officer for some time and thereafter deputing the LAO on election duty etc. The learned counsel would also contend that the land acquired by the petitioner was for public purpose and thus the impugned judgment passed by the Reference Court is not justifiable. Keeping in view, the interest of public, the learned Standing Counsel would contend that if the delay of 1318 days is condoned, no prejudice would be caused to the respondents - claimants.

13. *Per contra*, opposing the delay, the learned counsel for the respondents would contend that the land was acquired in the year 2006 and the impugned judgment was passed on 02.09.2015. The petitioner did not explain the day-to-day delay caused in preferring the

appeal. Just because the petitioner is a Government entity, there is no separate Law of Limitation for it and they have to be treated like any other litigant. No special consideration should be given to the petitioner organization. In support of his contention, the learned counsel relied upon the principle held by the Apex Court in **Postmaster General v. Living Media India Limited**¹, wherein delay of 427 days caused in filing the SLPs. by the Postal Department was refused to be condoned. In the said case, the Apex Court also relied on the observations made by it in earlier decision in **Pundlik Jalam Patil v. Jalgaon Medium Project**², which are as under:

“29. It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.

30. Public interest undoubtedly is a paramount consideration in exercising the courts' discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner sub serves public interest. Prompt and timely payment of compensation to the land losers facilitating their rehabilitation/resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the

¹. (2012) 3 SCC 563

². (2008) 17 SCC 448

case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the land losers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act. Dragging the land losers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest.”

By referring the aforesaid judgment and other decisions, the Apex Court further held in paragraph Nos.27 and 28 in **Postmaster General**¹ which are as under:

“27. It is not in dispute that the person(s) 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.”

28. 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.

The Apex Court further held in paragraph No.29 as under:

“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 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.”

14. In **Basawaraj v. Special Land Acquisition Officer**³, the Apex Court had an occasion to deal with the expression “*sufficient cause*” and its interpretation and held as under:

³. (2013) 14 SCC 81

“12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed lex" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

13. The Statute of Limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale....”

In the said judgment, the Apex Court while dealing with the delay of 5½ years in filing the appeals under Section 54 of the Act held as under:

“15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough

reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

With the above said finding, the Apex Court dismissed the SLP by upholding the order passed by the High Court in dismissing the petition to condone the delay of 5½ years.

15. In **Estate Officer, Haryana Urban Development Authority v. Gopi Chand Atreja**⁴, wherein the delay was 1942 days, the Apex Court categorically held that the Appellant - HUDA is a statutory authority created under the Haryana Urban Development Authority Act, 1977, and it has its well-established legal department to look after the legal cases filed by HUDA and against the HUDA in various Courts. They have panel of lawyers to defend their interest in Courts. It held that the said HUDA was fully aware of the adverse

⁴. (2019) 4 SCC 612

orders passed in the first appeal against them, and there was no justification on their part to keep quiet for such a long time and not to file the appeal within the stipulated period. With the said observation, the Apex Court declined to condone the delay of 1942 days in filing the second appeal and upheld the order passed by the High Court in refusing to condone the said delay.

16. Coming to the case on hand, the petitioner - appellant - HMDA is a Statutory Body created under HMDA Act, 2008. The main objects of the said Authority are to undertake preparation of Metropolitan Development and Investment Plan, prioritize the implementation of the said Plan, execution of projects and schemes through Action Plans for any sector or area of the Metropolitan Region and other incidental activities. It also responsible for undertaking preparation of Metropolitan Development Plan and Investment Plan and an Infrastructure Development Plan, undertake or promote townships development, land pooling schemes and development schemes, encourage Private Public Partnership for various development projects, undertake development of circulation network, transportation facilities, area level social and other amenities and facilities and other planning and development matters. The petitioner authority is having sources of finances including Metropolitan Development Fund and Seed Capital, a Revolving Fund for the purpose of performing its functions. The petitioner - appellant

authority is also having its own hierarchy of employees including legal department and Standing Counsel for various Courts.

17. As discussed supra, it is the contention of the petitioner - appellant that after obtaining the certified copy of the judgment and decree, dated 02.09.2015, in LAOP No.1322 of 2008, it had sought legal opinion for filing an appeal and accordingly its Standing Counsel opined to prefer an appeal. After bifurcation of the State, there is acute shortage of staff in HMDA and the entire office is administered with 1/3rd staff alone and thereby caused the delay of 1318 days in preferring the appeal. In the additional affidavit, the petitioner - appellant made an attempt to explain the delay of 1318 days caused in filing the appeal in a better way. In the said additional affidavit, the petitioner - appellant has narrated certain dates, such as obtaining certified copies of the impugned judgment and decree, change of Standing Counsel, non-availability of regular Officer and deputation of Officer on election duty etc.

18. According to the petitioner - appellant, the impugned judgment was dated 02.09.2015, their Standing Counsel in lower Court sent the legal opinion on 01.03.2016 enclosing the impugned judgment. Between these two events, there is a clear gap of six (06) months. Thereafter, on 16.05.2016, the LAO addressed a letter to the Standing Counsel of the petitioner at High Court for filing an appeal. For this, there was a delay of about 2 ½ months. On 22.06.2016, the Standing Counsel at High Court had resigned and on 06.07.2016, the

other Standing Counsel was given charge until further orders. Further, the present LAO was transferred on 19.12.2016 and thereafter no regular LAO was appointed till 04.01.2018. Vide proceedings No.983/CLC/2012, dated 19.02.2018, the ORR Project files were allotted to some other Standing Counsel for HMDA. Hence, there is delay of more than 1½ year.

19. According to the petitioner, on 08.11.2018, the ORR Project files were handed over to the present Standing Counsel. At this stage also, there was delay of about nine (09) months. According to the petitioner, on receipt of notice in E.P.No.178 of 2018 on 19.11.2018, they have contacted their Standing Counsel at High Court, but the file was found missing. The deponent of the affidavit filed in support of the present petition took charge as LAO and while pursuing the matter, she was deputed on Election Duty from March to May, 2019. Thereafter, she applied certified copies on 14.06.2019 afresh, which were received on 11.07.2019. Here also, there was a clear delay of about eight (08) months.

20. The above stated facts would show that there were laches on the part of the petitioner at every stage. There is no proper explanation constituting 'sufficient cause' for such inordinate delay. As already stated above, the acquisition of land of the respondents - claimants was in the year 2006 and the LAO passed the Award on 24.11.2007. The impugned judgment passed by the Reference Court in LAOP 1322 of 2008 was on 02.09.2015. The learned counsel for

the petitioner - appellant by referring the above stated reasons would contend that public interest was involved in acquisition of land in question and the impugned judgment is unjustifiable. If the same is allowed to be executed, heavy loss would be caused to the public exchequer. By considering the said public interest, the learned counsel would pray for condonation of delay in preferring the appeal.

21. Admittedly, there is inordinate delay of 1318 days in preferring the appeal by the petitioner, a statutory body created under the HMDA Act, 2008 with the aforesaid mentioned objects. The respondents - claimants filed E.P. No.178 of 2018 for execution of the judgment and decree passed by the Reference Court. The petitioners received the notice in the said E.P. on 19.11.2018. The land of respondents - claimants was acquired by the petitioner in 2006 and they were deprived of their legitimate compensation from then onwards. There is no attempt made by the petitioner for prompt and timely payment of compensation to the land losers, the respondents herein, facilitating their rehabilitation/resettlement, which is equally an integral part of public policy, and as observed by the Apex Court in **Postmaster General**¹, public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent manner. In the present case, there is no such pleading by

the petitioner except saying that the impugned judgment of the Reference Court is not justifiable. Thus, dragging the land losers to Courts of law, years after the termination of legal proceedings, would not serve any public interest.

22. As already stated above, the petitioner being a statutory body should be model to other organizations. It is also having a fiduciary duty to comply with the statutory functions, more particularly, in the present case, where the *lis* is with regard to land losers. In the said circumstances, the delay cannot be condoned mechanically. Admittedly, there is inordinate delay at every stage. The petitioner - appellant did not explain it by showing 'sufficient cause' except mentioning change of Standing Counsel, not posting a regular Land Acquisition Officer for some time and thereafter deputing the regular LAO on election duty etc.

23. The Statute of Limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. In the present case also, as discussed supra, the petitioner did not show any 'sufficient cause' and did not explain the inordinate delay of 1318 days in preferring the appeal. The petitioner is undertaking various developments including the land pooling, sale of land etc. and getting huge funds out of it. It is having its own departments for its effective functioning including

Legal Department. It is an organized sector with infrastructure and well trained staff. Therefore, it cannot claim that after bifurcation of the combined State of Andhra Pradesh, there is acute shortage of staff in HMDA and the entire office is administered with 1/3rd staff alone. With the said excuse, the petitioner cannot seek indulgence of this Court in condonation of delay of 1318 days, which is inordinate.

24. Thus we hold that the present petition is devoid of merits and it is accordingly dismissed. Consequently, the LAAS No.93 of 2019 is also dismissed.

As a sequel, miscellaneous applications, if any, pending in the appeal, stand dismissed.

M.S. RAMACHANDRA RAO, J

K. LAKSHMAN, J

07th January, 2020
Mgr