



CMP(MD) No.6959 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Thursday, the Fourteenth day of September Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

C.M.P(MD)No.6959 of 2023

in

S.A(MD)SR.No.42659 of 2023

THE SPECIAL THASILDAR (ADW)
LAND ACQUISITION OFFICER,
THAMARAIKULAM,
PERIYAKULAM,
THENI DISTRICT.

... PETITIONER/ APPELLANT

Vs

THAVAMUDAIYA THEVAR (DIED)

T .SUBBAMMAL (DIED)

1.T. KARUPPAYEE AMMAL

2 T.THANGAM

3 T.MANI

4 T.SENTRAYAN

5 T.VANAKILI



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WIKINOM K.NACHIMUTHU THEVAR (DIED)

6 M.SOLAIAMMAL

7 M.IYYAMMAL

8 M.PALANIAMMAL

9 M.MURUGESWARI

10 M.AMARAVATHI

11 M.RAJAMANI

12 N.SEETHALAKSHMI

13 N.RAJATHI

14 N.PUSHPAVALLI

15 N.KANNAN

... RESPONDENTS/RESPONDENTS

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to condone the delay of 2228 days in filing the above appeal against the judgment and decree passed in L.A.C.M.A.No.15 of 2008 dated 11-01-2017 on the file of the learned Sub Court, Theni and thus render justice.

PRAYER IN S.A(MD)SR.No.42659 of 2023:

To set aside the Judgment and Decree, dated 11.01.2017 made in L.A.C.M.A. No.15 of 2008 on the file of learned Sub Court, Theni reversing the Award passed in ROC No.2639/95A dated 12.01.1999 and allow the above second appeal.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of



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MR.A.BASKARAN, Additional Government Pleader for the petitioner and of
MR.A.K.BASKARA PANDIN A, Advocate on behalf of the Respondents 1 to 5 and 7
to 15, the court made the following order:-

Reserved on : 09.08.2023

Pronounced on : 14.09.2023

This Civil Miscellaneous Petition is filed to condone the delay of 2228 days in filing Second Appeal against the order dated 11.01.2017 made in L.A.C.M.A.No.15 of 2008 on the file of the Sub Court, Theni.

2. The petitioner has stated reasons in the accompanying affidavit filed along with the Civil Miscellaneous Petition are follows:

The petitioner office has acquired the lands including the lands of the respondent for the provision of Tamil Nadu Harijan Welfare Act, 31/1978. The petitioner officer passed award fixing Rs.250/- per cent. The respondent preferred the appeal in L.A.C.M.A.No.15 of 2008 before the Sub Court, Theni. The Sub Court, Theni has fixed a sum of Rs.1500/- per cent against Rs.250/- fixed by the petitioner officer by increasing six times and also awarded 30% solatium and 12% p.a. interest.

This was brought to the petitioner by higher officials belatedly. The petitioner applied



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for certified copies of order on 21.09.2020 and the same were made ready on 25.09.2020. Thereafter, the papers were sent to Additional Government Pleader to get opinion. Hence, there is delay of 2228 days in preferring the Second Appeal.

3. The respondents filed counter and objected the petition and stated as follows:

The petitioner acquired 2.71.5 Hectares of land belonged to the respondent for providing house site to the Adi Dravidar peoples. The petitioner fixed compensation of Rs.250/- per cent. The respondent preferred the appeal in L.A.C.M.A.No.15 of 2008 before the Sub Court, Theni. The Sub Court, Theni passed order enhancing compensation at Rs.1,500/- per cent with solatium and subsequent interest. The Sub Court, Theni passed award on 11.01.2017. The petitioner has filed copy application on 21.09.2020. The petitioner has not explained the reason for filing copy application with huge delay. Though the petitioner obtained certified copies on 25.09.2020 the petitioner filed this appeal in the year 2022 after lapse of 2 years. The respondent filed E.P.No.56 of 2022 before the Sub Court, Theni on 19.01.2022 and after getting notice of the same the petitioner filed this petition to drag the execution proceedings. Though the petitioner acquired lands in 1999 and after several contest, the award passed in the year 2017 by the Sub Court, Theni, the petitioner prevented the



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respondents from enjoying the fruits of the decree. Therefore, the petition is liable to be dismissed.

4. The learned counsel for the petitioner has submitted that the First Appellate Court has awarded compensation under the Tamil Nadu Land Acquisition Act for the lands acquired under the Tamil Nadu Acquisition of Land for Adi Dravidar Welfare Scheme Act, 1978. Further, the First Appellate Court has wrongly taken into consideration of the sale deed which is for the sale of 2.5 cents house site. Whereas the acquired lands are manavari punja lands. The First Appellate Court awarded solatium at 30% and subsequent interest at 12% p.a. as per the Tamil Nadu Land Acquisition Act, 1984. As per Section 7 of the Tamil Nadu Acquisition of Land for Adi Dravidar Welfare Scheme Act, 1978, for solatium 15% only has to be taken into account and further, as per Section 12 of the Act, subsequent interest can be ordered only at 6%. The petitioner office being government official has to get approval and opinion from higher officials. The public money would not be given under wrong quote of the Act by the First Appellate Court. The petitioner has good case. Therefore the delay of 2228 days has to be condoned. This Court has already condoned huge delay in nature of this case by imposing exemplary cost. When important questions of law involved, the delay might be condoned by imposing exemplary costs. In



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support of his arguments, the learned counsel for the petitioner has relied on the citations as follows:

1. (2009) 13 Supreme Court Cases 192 (State of Karnataka Vs. Y.Moideen Kunhi (Dead) by LRS. and Ors., wherein the Hon'ble Supreme Court has held in paragraph Nos.17, 20 and 23 as follows:

“17.It was noted that adoption of strict standard of proof some times fail to protract public justice, and it would result in public mischief by skilful management of delay in the process of filing an appeal.

20.....Many matters concerning the State Government or Central Government are delayed either by the nature of bureaucratic process or by deliberate manipulation of the same by taking advantage of loopholes in the conduct of litigation. Several instances have come to the notice of this Court whereas as noted above appeals have been filed where the revenue involved runs to several crores of rupees.

23.Keeping in view the importance of questions of law, which are involved we are inclined to condone the delay of subject to payment of exemplary costs.....”

2. 2020 (3) MWN (Civil) 794 (Chinna Manthadi (Died) and Ors Vs. N.Rosi Manthadi (Died) and Ors., wherein the Hon'ble Supreme Court has held in

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paragraph No.7 as follows:

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“ 7.Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigate him as an irresponsible litigant. He should have been more vigilant but on his failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation with respect to the property, concededly to be valuable.....”

5. Per contra, the learned counsel for the respondent has vehemently contended that the land of the respondent measuring 2.71.5 hectare was acquired by the petitioner in the year 1999. Since the compensation was given by the petitioner meagre, the respondent filed LA.C.M.A.No.15 of 2008 before the Sub Court, Theni and the compensation was enhanced as Rs.1500/- per cent against Rs.250/- fixed by the petitioner. Even nearly 25 years lapsed the petitioner has not paid the compensation amount. The respondent is an agriculturist. Though the petitioner applied for certified copies in the year 2020 for the order passed in the year 2017, the petitioner has not preferred the appeal before this Court. After the respondent filed the Execution Petition in E.P.No.56 of 2022 and on getting notice of the same, the petitioner filed this petition in the year 2022. The petitioner has not assigned



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acceptable reason for the delay of 2228 days and they have no merit in the case.

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Delay occurred on account of lapses, negligence and dereliction of duty on the part of the government officials cannot be allowed. In support his argument, the learned counsel for the respondent has relied on citation reported in (2012) 3 Supreme Court Cases 563 (Postmaster General and Ors. Vs. Living Media India Limited and Ors.), wherein Hon'ble Supreme Court has held in paragraph Nos. 27, 29 and 30 as follows:

“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.

29.....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



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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 a few.

30...according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone a huge delay. accordingly appeals are liable to be dismissed....”

7. Heard both side and perused the records in this Civil Miscellaneous Petition.

8. It is clear that the respondent's land was acquired under the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978. The respondent preferred L.A.C.M.A.No.15 of 2008 before the Sub Court, Theni, challenging the compensation awarded by the Special Tahsildar, Adi Dravidar Welfare under Award No.4/98-99 Roc.No.2639/95/A dated 12.01.1999. The First Appellate Court has enhanced compensation at Rs.1500/- per cent against Rs.250/- per cent fixed by petitioner office and also awarded 30% Solatium and 12% interest as per provisions of the Land Acquisition of Act. It is the case of the petitioner that due to departmental



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administrative works, they were not able to file copy application for preferring appeal and they filed copy application on 21.09.2020 and thereafter they placed papers before the Additional Government Pleader for opinion about the feasibilities of filing the Second Appeal. While so, they came to know about the enhanced award by the First Appellate Court under the provision of Land Acquisition Act instead of Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978. The petitioner wants to question about the same by filing the Second Appeal. It is held by the Hon'ble Supreme Court in the citation produced by the petitioner that in view of the importance of questions of law involved, the delay is condoned subject to the payment of exemplary cost.

9. Considering both side arguments and both side decisions, this Court is of the opinion that the petitioner has prima facie in raising question of law in the Second Appeal and at the same time the inconvenience caused to the respondent has to be compensated with exemplary manner and thus, the delay is to be condoned by imposing certain condition to meet out the inconvenience caused to the respondent.

10. In the result, this Civil Miscellaneous Petition is allowed on condition that the petitioner shall pay an exemplary cost of Rs.30,000/- (Rupees Thirty Thousand



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only) to the respondent within a period of four weeks from the date of receipt of a copy of this order, failing which, this petition shall stand automatically dismissed without further reference to this Court.

sd/-
14/09/2023

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/09/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

vsd

TO

THE SUBORDINATE JUDGE, THENI

ORDER
IN

C.M.P(MD)No.6959 of 2023

in
S.A(MD)SR.No.42659 of 2023

Date :14/09/2023

RK /VRS(19/09/2023) 11P / 2C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023