IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-208-2017 (O&M)
Date of decision: 08.01.2024
Reserved on : 16.11.2023

State of Punjab and others
....Petitioners

Versus

M/s Vikrant Electrical Pvt. Ltd.
..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vikas Arora, AAG, Punjab

Mr. Sunil Chadha, Sr. Advocate with
Mr. Tara Dutt, Advocate for the respondent

ANIL KSHETARPAL, J

1. The State of Punjab has filed this revision petition to assail the correctness of the order passed by the First Appellate Court refusing to condone the delay of more than 3 years in filing the appeal.

2. In order to comprehend the issue involved in the present case, some relevant facts, in brief, are required to be noticed.

3. The Director of Industries invited applications for the allotment of industrial plots in the Districts Ludhiana, Hoshiarpur, Ferozepur and Amritsar. The respondent-plaintiff filed an application alongwith a demand draft of Rs.1,000/- and a project report. On 23.08.1985, the allotment letter was issued with respect

to an industrial plot no.241 in Industrial Area A, Ludhiana at a tentative price of Rs.450/- per square yard. The price of the plot was required to be deposited within 60 days from the date of issuance of the allotment letter. It was provided that if the amount is not deposited, the allotment shall stand cancelled and the earnest money shall be forfeited. It is the case of the State that the respondent did not deposit a single penny despite extension of three months granted to the respondent vide communication dated 17.12.1985. On 03.03.1986, the Deputy Commissioner, Ludhiana, without having jurisdiction, re-assessed the price of the plot at the rate of Rs.125/- per square yard, disregarding the procedure which was then forwarded to the Department of Industries. On 16.08.1990, the respondent filed a suit for declaration with a consequential relief of mandatory injunction, directing the respondents to allot the plot at the rate of Rs.125/- square yard. In the aforesaid suit, the State of Punjab was proceeded against ex-parte. The trial court vide ex-parte decree and judgment dated 07.05.1994, directed the State to allot the plot at the rate of Rs.125/- per square yard. An application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') was filed to set aside the ex-parte judgment and decree, which was dismissed by the trial court on 08.04.2009. An appeal was filed before the First Appellate Court alongwith an application for condonation of delay of more than 3 years, which, as already noticed, has been dismissed by the First Appellate Court. The First Appellate Court has noted the reasons highlighted in the following manner:-

> *"2. It is averred in the application that the impugned order was passed on 08.04.2009. Thereafter, a letter dated 17.6.2009 was written by the General Manager, District Industries Centre, Ludhiana to the ADA to know latest position of the case. After obtaining report from ADA and DDA dated 07.07.2009 and 09.07.2009 respectively, the District Attorney sent the same to the Director, Prosecution and Litigation, Chandigarh vide Letter No. 1582 dated 15.07.09. The copies of statements of witnesses were called by the Joint Director, which were sent to the Director, Industries and Commerce Punjab, Chandigarh. The District Industries Centre vide letter no. 878 dated 27.07.2009 asked the Director of Industries and Commerce, Punjab to fix responsibility and to reopen the case. Thereafter, the District Manager of Industries Department issued letter no. 3467 dated 05.07.2010 to the DI Punjab seeking sanction for defending the case. The Punjab Govt., Industries and Commerce Department issued letter dated 13.09.2010 to the Advocate General, Punjab, Chandigarh for filing appeal. The General Manager of DIC, Ludhiana issued letter no. 1786 dated 31.03.2011 to the D.I Punjab seeking revised sanction for filing civil revision, Gursis Singh, Project Manager (Retired) issued letter dated 04.08.2011 to the Director Prosecution and Litigation Punjab which was replied to vide letter dated 10.08.2011. The Director of Industries Department vide letter dated 11.11.2011 directed General Manager of District Industries Centre, Ludhiana, to supply complete record to the office of District Attorney, Ludhiana. The General Manager, D.I.C, Ludhiana vide letter dated 23.08.2011 disclosed to D.I that the case is not fit for filing appeal. D.I, Punjab, Chandigarh issued letter dated 15.12.2011 asked the District Attorney, Ludhiana to file appeal. The General Manager, DIC, Ludhiana sought original copy of judgment from the Director of Industries*

> *Department, Punjab, but vide letter dated 03.04.2012 only photocopies were supplied. Vide letter dated 19.04.2012, the District Attorney cleared that he has got copy of the judgment but he demanded the grounds of appeal and application under Limitation Act. The Joint Director, Industries and Commerce, Punjab issued letter dated 03.05.2012 to the General Manager, D.I.C Ludhiana to file appeal by giving personal attention. The General Manager, DIC, Ludhiana sent all the documents to the District Attorney and asked him to file appeal vide letter dated 10.09.2012. The General Manager, DIC, Ludhiana vide letter No.5359 dated 17.10.2012 sent all the documents to the Deputy District Attorney, Ludhiana for filing appeal. Therefore, there occurred delay of more than three years four months in filing the appeal on account of correspondence taking place between different offices. The said delay is neither international nor willful but is for the reasons stated above."*

4. The First Appellate Court has dismissed the application on the ground that from 27.07.2009 to 05.07.2010 there is no correspondence and therefore, the Department did not make any effort during this period of one year. Hence, the explanation furnished for seeking condonation of long delay is wholly unsatisfactory.

5. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook alongwith the synopsis filed by the learned counsel representing the parties.

6. On the one hand, the learned counsel representing the State has contended that the delay should have been condoned as the

dispute is with regard to the public property and it is not a private affair. He submits that the processes in the Government Sector take time as the files are moved from one Officer to another, and it causes delay. Due to the delay caused, the court should not have refused to entertain a meritorious matter.

7. On the other hand, the learned senior counsel representing the respondent submits that there is a further delay of 2 years in filing the revision petition and the explanation furnished by the petitioner, while filing the appeal, is not sufficient. He also relies upon the judgment passed in the **Office of Chief Post Master General & Others vs. Living Media India Ltd. 2012 (2) CCC 1** and **State of UP through Executive Engineer and another vs. Amar Nath Yadav 2014 (1) CCC 690**.

8. This Court has considered the submissions made by the learned counsel representing the parties, while analyzing their arguments.

9. In a case of gross negligence or deliberate inaction or lack of bonafides, the condonation of delay should not be allowed, however, the court cannot be oblivious of the fact that the Government Departments work an with impersonal machinery and inherited bureaucratic methodology of making notes which are outdated in view of the modern technologies. Section 5 of the Limitation Act, 1963 provides that if the explanation furnished is plausible and sufficient, the court shall condone the delay, subject to

the payment of costs. Apart from the aforesaid facts, sometimes, the Government officials on account of a private party, conceal a particular file resulting in delay. However, it should not be made the basis while refusing to condone the delay because ultimately, the public interest suffers. The decisions of the Government are collective and the court, while passing the order, is required to maintain a positive balance between all the facts, before refusing to condone the delay, particularly when there is a considerable degree of procedural red tape in the process of decision making. In **Collector, Land Acquisition, Anantnag vs. Mst. Katiji, (1987) 2 SCC 107**, the court held that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be given a priority. Similarly, in **G.Ramegowda vs. Special Land Acquisition Officer (1998) 2 SCC 142**, the Supreme Court held that the Court while deciding the applications for condonation of delay must adopt a pragmatic view. Even recently the Supreme Court in **Sri Devi Datla vs. Union of India and others 2021 5 SCC 321** reiterated the aforesaid view. In this case, the respondent was a private industrial company. The dispute in this case was with respect to 3 kanals industrial plot. It was allotted in the year 1985. However, the respondent did not pay a penny and filed litigation. The civil court issued the direction for the allotment of the industrial plot at the rate of Rs.125/- per square yard in an industrial area of Ludhiana City, which is one of the most sought after industrial area in the State. There is a great degree of doubt about the competence of the Deputy Commissioner to recommend allotment at the rate of 125/- per square yard. The Government has projected that the aforesaid recommendation was withdrawn/cancelled by the Deputy Commissioner, himself. The decision of the case is expected to have wider ramifications, particularly when various other allottees will claim parity. Though there is long delay, however, that itself is not sufficient to not entertain a meritorious case. The respondent has failed to draw the attention of the Court to any circumstance which proves that delay was intentional or on account of malafides.

10. This Court has carefully read the judgment passed in **Amarnath Yadav's case (supra)**. There was a delay of 481 days in filing the Special Leave Petition. In the peculiar facts of the case, the Court, while relying upon the judgment passed in **Post Master General's case (supra)** dismissed the application. In this case, the Supreme Court found that despite an opportunity which was given to the Government to file a proper affidavit, a sufficient explanation was not furnished. The Court also held that there was no explanation for not applying for the certified copy of the impugned order within the specified time period.

11. It is evident that both the judgments have been decided in the peculiar facts of the case and such judgments, with greatest respect, do not lay down the law.

12. It may be noted here that the learned counsel representing the respondent while filing the written statement has offered to deposit the amount at the rate of Rs.450/- per square yard. It may be noted here that the respondent is alleged to have made the payment by draft, however, the same has not been encashed because of the pendency of the revision petition. In such circumstances, this Court is of the considered view that the delay deserves to be condoned. Resultantly, the revision petition is allowed. The order passed by the First Appellate Court on 10.12.2014 is set aside, while directing the First Appellate court to decide the appeal on merits. The parties through their learned counsel are directed to enter appearance before the First Appellate Court on 08.02.2024.

13. All the pending miscellaneous applications, if any, are also disposed of.

08.01.2024 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No