

G. Ramegowda, Major and Others

Vs

Special Land Acquisition Officer, Bangalore

Basavalingappa

Vs

Special Land Acquisition Officer, Bangalore

Civil Appeals Nos. 856, 857

(S. Natarajan, M.N. Venkatachaliah JJ)

10.03.1988

JUDGMENT

VENKATACHALIAH, J. -

1. These three appeals, by the claimant-respondents in certain Land Acquisition appeals before the High Court, are preferred, by special leave, against the common order dated June 14, 1973 of the High Court of Mysore (Karnataka) condoning, under Section 5 of the Limitation Act, 1963, certain delays on the part of the Land Acquisition Officer in preferring the three corresponding appeals in M.F.A. No. 290 of 1973, M.F.A. No. 293 of 1973 and M.F.A. No. 289 of 1973 respectively.
2. The appeals before the High Court were directed against the common award made by the Civil Judge, Bangalore District, in certain Land Acquisition references under Section 18 of the Land Acquisition Act steeply enhancing the compensation for the lands of the appellants acquired for the purpose of the 'University of Agricultural Sciences' at Bangalore. The circumstances leading up to and necessitating the prayer for the condonation of the delays before the High Court seem somewhat unfortunate, casting, as they do, aspersions on the probity and rectitude of the conduct and good faith of the government counsel entrusted with the conduct of land acquisition cases.
3. The common award, in the three land acquisition references was passed by the learned Civil Judge on July 17, 1970. Application for certified copies was made on August 31, 1971; copies obtained on January 5, 1972 and M.F.A. No. 289 of 1973 was lodged before the High Court on January 19, 1972 and the other two appeals viz., M.F.A. Nos. 290 of 1973 and 293 of 1973 on April 10, 1972. There were, thus, substantial delays in preferring the appeals.
4. The Land Acquisition Officer, appellant before the High Court, filed applications to have these delays excused. The Division Bench of the High Court was persuaded to make an order condoning the delay.
5. The grievance of the State in the appeals was that the lands which had been purchased in the year 1962 for a sum of Rs. 7000 per acre, were acquired pursuant to the preliminary notification dated March 2, 1963 and the award of the Land Acquisition Officer granting Rs. 58,000 per acre was

itself unduly generous having regard to the fact that the acquisition was just about an year after the purchase by the claimants and that the further enhancement by the Civil Court to Rs. 1,45,200 per acre clearly suffered from the vice of extreme excessiveness.

6. Sri R. B. Datar, learned counsel appearing in support of these appeals assailed the order of the High Court on the ground that the High Court fell into a manifest error in condoning these inordinate and wholly unjustified delays and that explanation offered before, and accepted by, the High Court cannot, in law, be held to constitute 'sufficient cause' for purposes and within the meaning of, Section 5. Learned counsel strenuously urged that the rights vesting in the successful parties to a litigation by the expiry of the period of limitation should not lightly be interfered with unless it was established that the appeal could not have been lodged in time despite the exercise of reasonable diligence on the part of the appellant. Learned counsel further contended that the fact that the Government Pleaders had not discharged their duty to the government, even if true, would be wholly beside the point as that would be a matter of internal administration. If government was not able to set its own house in order, says learned counsel, the opposite party, who had the benefit of the adjudication should not be exposed to a time barred appeal. There cannot, says counsel, be one standard for an ordinary litigant and another for government.

7. On the merits of the cause shown, learned counsel said, the explanation served only to aggravate the negligence; that the explanation might, at best, amount to sufficient cause for the delay up to January 20, 1971 when the Civil Judge wrote to the government and the latter, admittedly, was put on notice of the award and decree passed in the cases and that the subsequent delays of over a year thereafter in preferring the appeals cannot, even on the most liberal construction of 'sufficient cause', be said to be justified.

8. Shri Veerappa, learned counsel for the State, on the other hand, while seeking to support the order under appeal submitted that the circumstances of the case disclosed that the government was put in a predicament by its own law officers and that where, as here, public interest had come to suffer owing to the bad faith and divided loyalties on the part of the officers and advisers of government, the technicalities of procedure should yield to considerations which would promote public interest and substantial justice. Shri Veerappa submitted that in the present case the Government Pleaders whom government had necessarily to and did trust had let down that trust and this was a case of 'Salt having lost its savour'.

9. Shri Veerappa submitted that, during the pendency of the present appeals, the High Court had heard and disposed of the appeals before it on the merits substantially reducing the compensation; that appellants have already preferred SLP Nos. 2319, 2320, 2493 of 1974 against that judgment and that the present appeals, preferred as they are against the mere condonation of delay, do not survive at all and must be held to have become infructuous.

10. We might, perhaps, deal with the latter submission of Shri Veerappa first. The fact that the main appeals are themselves, in the meanwhile, disposed of finally on the merits by the High Court would not by itself detract from and bar the consideration of the correctness of the order condoning the delays. This is an instance of what are called 'dependent orders' and if the order excusing the delays is itself set aside in these appeals, the further exercise, made in the meanwhile, by the High Court finally disposing of the appeals, would be rendered nugatory. The submission of Shri Veerappa is, therefore, insubstantial.

11. In support of its prayer before the High Court for condonation of the delays, government

narrated the chronological sequence of events and the somewhat protracted correspondence between the Government Pleader and the government and the difficulties faced by the administration in even ascertaining the correct state of affairs owing to the negative and evasive attitude of the Government Pleaders. These events and correspondence are referred to and evaluated in paragraphs 5, 6 and 7 of the High Court's order. After a consideration of the matter, the High Court was persuaded to the view that in the circumstances of this case, it could not be said that the government was negligent. High Court observed :

Taking into account all the circumstances of the case, we hold that there was not such negligence or inaction on the part of the LAO, as to induce us not to exercise our discretion under Section 5 of the Limitation Act to condone the delay in presenting the appeal.

12. Adverting to the conduct of the Government Pleader the High Court observed :

But how could the LAO anticipate that the Government Pleader or the Assistant Government Pleader would fail to do such elementary duties like applying for such certified copies, obtaining them and forwarding them to the government with his opinion ? To say the least, the conduct of the Government Pleader and/or the Assistant Government Pleader appears to us to be extraordinary.

13. Indeed in the counter-affidavits filed on behalf of the State Government in these appeals, the Land Acquisition Officer avers :

I beg to submit that due to the unusual conduct of the District Government Pleaders who were in office during a particular period government had to face the problem of delay in filing of appeals in hundreds of cases. The government was not able to know the real state of affairs till the concerned Government Pleaders relinquished their office. In fact, for some time, there was utter confusion and it became practically impossible to find out as to which are the Land Acquisition cases which have been disposed of and in which appeals were not filed though appeals ought to have been filed. It is humbly submitted that the case of the government for condonation of delay was that on account of the fraud played by the concerned Government Pleaders delay in filing the appeals has occurred and more than a crore of rupees would be a loss to the government on account of the said fraud played by the Government Pleaders. In fact, in innumerable cases the Hon'ble High Court has condoned the delay in filing of the appeals, taking into consideration the most unusual conduct of Government Pleaders which had landed the government in difficulties. I beg to further submit that almost all the appeals which had been entertained by the Hon'ble High Court after condoning the delay, have been allowed on consideration of their merits....

14. The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See : Ramlal, Motilal and Chhotelal v. Rewa Coalfield Ltd. ((1962) 2 SCR 762 : AIR 1962 SC 361); Shakuntala Devi Jain v. Kuntal Kumari ((1969) 1 SCR 1006 : AIR 1969 SC 575); Concord of India Insurance Co. Ltd. v. Nirmala Devi ((1979) 3 SCR 694 : (1979) 4 SCC 365 : AIR 1979 SC 1666); Lala Mata Din v. A. Narayanan ((1970) 2 SCR 90 : (1969) 2 SCC 770 : AIR 1970 SC 1953); Collector, Land Acquisition v. Katiji ((1987) 2 SCC 107) etc. There is, it is true, no general principle saving the

party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression 'sufficient cause' in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay. In *Katiji case* ((1987) 2 SCC 107), this Court said : (SCC p. 108, para 3)

When substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay....

It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

15. In litigations to which government is a party there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decision of government are collective and institutional decisions and do not share the characteristics of decisions of private individuals.

16. The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it.

17. Therefore, in assessing what, in a particular case, constitutes 'sufficient cause' for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of government must have 'a little play at the joints'. Due recognition of these limitations on governmental functioning - of course, within reasonable limits - is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put government and private parties on the same footing in all respects in such matters. Implicit in the very nature of governmental functioning is procedural delay incidental to the decision making process. In the opinion of the High Court, the conduct of the law officers of the government placed the government in a predicament and that it was one of those cases where the mala fides of the officers should not be imputed to government. It relied upon and trusted its law officers. *Lindley, M.R.*, in the *In re National Bank of Wales Ltd.* (LR (1899) 2 Ch 629, 673) observed, though in a different context :

Business cannot be carried on upon principles of distrust. Men in responsible positions must be trusted by those above them, as well as by those below them, until there is reason to distrust them.

In the opinion of the High Court, it took quite some time for the government to realise that the law

officers failed that trust.

18. While a private person can take instant decision a "bureaucratic or democratic organ " it is said by a learned Judge "hesitates and debates, consults and considers, speaks through paper, moves horizontally and vertically till at last it gravitates towards a conclusion, - unmindful of time and impersonally". Now at the end, should we interfere with the discretion exercised by the High Court ? Shri Datar criticised that the delay on the part of government even after January 20, 1971 for over a year cannot be said to be either bona fide or compelled by reasons beyond its control. This criticism is not without substance. Government could and ought to have moved with greater diligence and dispatch consistent with the urgency of the situation. The conduct of government was perilously close to such inaction as might, perhaps, have justified rejection of its prayer for condonation. But as is implicit in the reasoning of the High Court, the unarticulated thought, perhaps was that in the interest of keeping the stream of justice pure and clean the awards under appeal should not be permitted to assume finality without an examination of their merits. The High Court noticed that the Government Pleader who was in office till December 15, 1970 had applied for certified copies on July 20, 1970, but the application was allowed to be dismissed for default. In one case, however, he appears to have taken away the certified copy even after he ceased to be a Government Pleader. In a similar context where delay had been condoned by the High Court, this Court declined to interfere and observed (Spl. Land Acquisition Officer v. B. M. Krishna Murthy, (1985) 1 SCC 469) : (SCC p. 472, para 5)

Having regard to the entirety of the circumstances, the High Court thought that the State should not be penalised for the lapses of some of its officers and that in the particular circumstances there were sufficient grounds justifying the condonation of delay in filing the appeals. It was a matter for the discretion of the High Court. We are unable to say that the discretion was improperly exercised.....

We think in the circumstances of this case, we should also decline to interfere. Appeals are dismissed, but without an order as to costs.

</html