

SUPREME COURT OF INDIA

K.Subbarayudu

Vs.

The Special Deputy Collector (Land Acquisition)

C.A.No.9288 of 2017

(Kurian Joseph and R.Banumathi,JJ.,)

19.07.2017

ORDER

R.Banumathi,J.,

SLP(Civil)No.30562 of 2016

1. Leave granted

2. This appeal by way of special leave under Section 54 of the Land Acquisition Act, 1894 has been preferred by the claimant assailing the judgment and order dated 12.07.2016 in L.A.A.S.M.P. No.61 of 2015 in L.A.A.S.(SR) No.12334 of 2014 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh by which the High Court declined to condone the delay of 3671 days in filing the appeal and dismissed the appeal.

3. A Notification under Section 4(1) of the Land Acquisition Act, 1894 was issued on 01.10.1990 for acquiring land to an extent of Acs.32.77 in Reach No.11 of Nallepalli village for foreshore submersion of Kandaleru Reservoir under Telugu Ganga Project. After conducting the award enquiry, Land Acquisition Officer, Telugu Ganga Project, Rapur passed an award, in Award No.12/91-92 dated 30.01.1992. The award was passed after taking into account the sale statistics for the preceding three years prior to the date of notification under Section 4(1) of the Land Acquisition Act which was obtained from the Sub-Registrar, Rapur and after verification of all sales, the land value is fixed by the Land Acquisition Officer and approved by the Special Collector, Telugu Ganga Project, Nellore as per norms prescribed under the Land Acquisition Act, 1894 amended in 1984. The Land Acquisition Officer (LAO) awarded compensation for cultivable dry lands at Rs.9,000/- per acre and for cultivable waste land at Rs.7,000/- per acre. The Land Acquisition Officer also awarded compensation of Rs.50-70 for each lime tree and compensation of Rs.32 for each pomegranate tree. The land was taken possession on 02.03.1994 and compensation paid to the land owners.

4. As against compensation awarded by the Land Acquisition Officer, reference was made under Section 18 of the Act to the Senior Civil Judge, Gudur. Before the reference court, on behalf of the claimants, CW-1 was examined and Exs.A1 to A5 were marked. On behalf of the referring officer, one of its employees was examined as R.W.1 and the particulars showing the compensation awarded by the LAO, Ex.B1 was marked. The Reference Court by its judgment and order dated 06.08.2004 in LAOP No.22/1993 enhanced the market value of land from Rs.9,000/- to Rs.12,000/- for cultivable dry land and to Rs.7000/- to Rs.10000/- for cultivable waste land per acre. Further the Reference Court fixed the market value of the trees to Rs.100/- per tree as against Rs.50/- to Rs.70/- awarded by the Land Acquisition Officer and confirmed the rate of Rs.32/- per pomegranate tree as fixed by the Land Acquisition Officer basing on the age of the trees.

5. Dissatisfied with the enhanced compensation, the appellants/claimants approached the High Court referring to the order in A.S. No.1749/2004 dated 01.03.2013 and other judgments of Andhra Pradesh High Court. However, there was a delay of 3671 days in so preferring the appeal. The High Court dismissed L.A.A.S.(MP) No.61/2015 in L.A.A.S. (SR) No.12334/2014 on the ground of inordinate delay of 3671 days since the High Court was of the view that no sufficient cause was shown for the delay and held that the delay sought to be condoned was not on account of a bona fide mistake but was merely intended to make gain basing on the assessment of value of pomegranate trees in the decisions of Peddireddy Madhava Reddy and Pidugu Seshugari Lakshmi Devi.

6. Aggrieved by the order of the High Court, the appellants are before us by way of special leave to appeal.

7. The learned counsel for the appellants submitted that the High Court failed to appreciate that the claimants have given satisfactory explanation for the delay of 3671 days in filing the appeal before the High Court and while so the High Court has erred in declining to condone the delay. It was further submitted that in L.A.S.S.No.46/2015, the High Court was pleased to condone the delay of 3386 days in filing the land acquisition appeal suit subject to the condition that in the event, the appellants/claimants succeed in the appeal, she is not entitled to any interest in respect of the period of delay and the same approach ought to have been given in case of appellants also. In so far as the quantum of compensation, learned counsel for the appellant has relied upon the decision of this Court in Civil Appeal Nos.11404-405 of 2016 dated 29.11.2016 whereby this Court has awarded compensation of Rs.3,000/- per pomegranate tree in connection with lands acquired for Somashila Project submergence. The learned counsel for the appellant prayed that the same amount of compensation of Rs.3,000/- per pomegranate tree be awarded to the appellant.

8. Per contra, supporting the judgment of the High Court, the learned counsel for the respondent submitted that reason for inordinate delay of 3671 days was not satisfactorily explained and the High Court rightly exercised its discretion in declining to condone the delay. Insofar as the judgment in Civil Appeal Nos.11404-11405 of 2016 is concerned, it is submitted that the said order relates to Somashila Project submergence of which the award was of the year 1999 and the same cannot be applied to the present case.

9. Heard the learned counsel for the parties at some length. Perused the impugned judgment and considered the documents and other materials placed on record.

10. The High Court dismissed the claimants' appeal mainly on the ground of delay of 3671 days in filing the appeal. On perusal of records, it is seen that the appellants have explained the reason for the delay in filing the appeal stating that they have entrusted the relevant papers to their co-villager namely, viz., Pullaiah who is well-conversant with the court proceedings and the said Pullaiah has also taken steps to engage an advocate at Hyderabad and the said Pullaiah informed that the appeal was filed and left for Kuwait to eke out his livelihood. Thus the appellants/claimants were under the impression that the appeal has been filed. The claimants have further stated that when they inquired the said Pullaiah, he informed them that he went to the house of Sri Jaganmohan Raju, Advocate and he learnt that the said Advocate is no more and expired in 2012 itself and on enquiry with the clerk of the said advocate, he learnt that no appeal has been filed and this has caused a delay of 3671 days in filing the appeal. The High Court rejected the explanation given by the appellants on the ground that there are contradictions between the affidavit filed by the said Pullaiah and the stand of the claimants and being not satisfied with the reason for the delay of 3671 days in preferring the appeal, the High Court dismissed the appeal.

11. Before the High Court, the appellants relied upon Yellasiri Sarojanamma's case, in L.A.S.S. No.46 of 2015, in which the High Court condoned the delay of 3386 days in filing the land acquisition appeal suit subject to the condition that in the event, the appellant/claimant thereon succeed in appeal, she is not entitled to any interest in respect of the period of delay. The appellants contended that the same approach ought to have been adopted in the case of appellants also. Insofar as, the reliance placed upon by the claimants in L.A.S.S. No.46/2015, the High Court seems to have brushed aside the contention of the appellants on the puerile ground that the relevant fact situation in the said case is not forthcoming in the said order. In our view, the High Court was not right in adopting a different yardstick in the case of the appellants in not condoning the delay.

12. The term "sufficient cause" is to receive liberal construction so as to advance substantial justice, when no negligence, inaction or want of bona fide is attributable to the appellants, the Court should adopt a justice-oriented approach in condoning the delay. In *State of Nagaland v. Lipok AO and Others*¹, it was held as under:-

"Section 5 is to be construed liberally so as to do substantial justice to the parties. The provision contemplates that the court has to go into the position of the person concerned and to find out if the delay can be said to have been resulted from the cause which he had adduced and whether the cause recorded in the peculiar circumstances of the case is sufficient" .

13. With the acquisition of lands, the lifeline of the agriculturist is lost. There may be omission on the part of the claimants to adopt extra vigilance; but same need not be used as a

ground to depict them with negligence or want of bona fide. In case of acquisition of lands of agriculturists, the courts ought to adopt a pragmatic approach to award just and reasonable compensation and not pedantic in their approach. In *Dhiraj Singh (D) Thr. Lrs. Etc. Etc. v. Haryana State and Ors. Etc. Etc.*², it was held as under:-

"15. Equities can be balanced by denying the appellants' interest for the period for which they did not approach the Court. The substantive rights of the appellants should not be allowed to be defeated on technical grounds by taking hyper technical view of self-imposed limitations. In the matter of compensation for land acquisition, we are of the view that approach of the Court has to be pragmatic and not pedantic."

14. When the concerned court has exercised its discretion either condoning or declining to condone the delay, normally the superior court will not interfere in exercise of such discretion. The true guide is whether the litigant has acted with due diligence. Since the appellants/claimants are the agriculturists whose lands were acquired and when similar situated agriculturists were given a higher rate of compensation, there is no reason to decline the same to the appellants. Merely on the ground of delay such benefit cannot be denied to the appellants. The interest of justice would be served by declining the interest on the enhanced compensation and also on the solatium and other statutory benefits for the period of delay.

15. Insofar as the compensation for the pomegranate trees, the appellants have placed reliance on the judgment of this Court dated 29.11.2016, in C.A. Nos.11404-11405 of 2016. Planting, raising and making commercial use of fruit bearing trees is a painstaking affair and cost of the same is consistently on rise as the years are passing by which is to be kept in view. Award of compensation in relation to fruit bearing trees depends on facts and circumstances of each case. It has been held in *Kerala State Electricity Board v. Livisha and Ors*³, in the following terms:

"11. So far as the compensation in relation to fruit bearing trees are concerned the same would also depend upon the facts and circumstances of each case. We may, incidentally, refer to a recent decision of this Court in *Land Acquisition Officer v. Kamandana Ramakrishna Rao* AIR 2007 SC 1142 wherein claim on yield basis has been held to be relevant for determining the amount of compensation payable under the Land Acquisition Act, same principle has been reiterated in *Kapur Singh Mistry v. Financial Commission and Revenue Secretary to Govt. of Punjab and Ors.*, *State of Haryana v. Gurcharan Singh and Anr.* [1995] 1 SCR 408, and *Airports Authority of India v. Satyagopal Roy* [2002] 2 SCR 505."

16. In the facts and circumstances of the said case, in C.A. Nos.11404-405 of 2016, considering the cost of planting and efforts involved in growing trees in general and in particular raising the pomegranate trees over the efflux of time, this Court deemed it appropriate to award Rs.3,000/- as compensation for each of the pomegranate tree.

17. However, the compensation of Rs. 3000/- per pomegranate tree, as has been awarded in the abovementioned case, cannot be made applicable to the present case, considering the fact that award of compensation by Land Acquisition Officer in the said case dated 08.03.1999, as opposed to award in the present case which is dated 30.01.1992. A period of about seven years is a considerable period to be taken note of while computing cost of planting and raising fruit bearing trees. It is obvious that seven years back a fruit bearing tree would have fetched lesser income than it would fetch now. In the facts and circumstances of the present case and taking into consideration that the appellants were also awarded compensation for the land, we deem it appropriate to award compensation of Rs.1500/- for each pomegranate tree.

18. In so far as the lime trees are concerned, fresh limes are available throughout the year and have good market and the lime trees are earning income almost throughout the year. The Reference Court enhanced the compensation of Rs.70/- to Rs.100/- per tree as against the compensation of Rs.52/- to Rs.70/- awarded by the Land Acquisition Officer. While considering the question of awarding compensation to lime trees, in *Shaik Imambi v. Special Deputy Collector (Land Acquisiton), Telugu Ganga Project*⁴, this Court held as under:-

“10. There is no specific documentary evidence in regard to the actual income from the orchard. As the reports of experts of the state government assessed the gross annual income from each tree as Rs.150-200/-, it would be appropriate to take the average thereof, namely Rs.175/- as the annual income per tree in this case. If Rs.35/- is deducted towards the cost of cultivation and other expenses as recommended by the experts, the net annual income would have been Rs.140/- per tree or Rs.1,06,540/- for 761 trees.”

Applying the ratio of the above decision, Rs.250/- is awarded as the annual income per tree. Compensation of Rs.100/- per each lime tree enhanced to Rs.250/- is awarded.

19. Compensation awarded to the appellants is enhanced to Rs.1,500/- for each pomegranate tree and Rs.250/- for each lime tree. The appellants are also entitled to all statutory benefits like solatium and other benefits and interest on the same. It is further directed that the appellants shall not be entitled to any interest during the period of delay of 3671 days. The appeal is partly allowed in the above terms. Parties are to bear their respective costs.

Judgment Referred.

¹(2005) 3 SCC 0752

²(2014) 9 SCALE 0441

³(2007) 6 SCC 0792

⁴(2011) 11 SCC 0639