

KAMS010065512022



**IN THE COURT OF THE I ADDITIONAL DISTRICT &
SESSIONS JUDGE AT MYSURU**

Dated this the 15th day of December 2023

Present: Sri D.Puttaswamy, B.A., LL.B.
I Addl. Dist. & Sessions Judge
Mysuru.

: LAC(APPL)/444/2022 :

Appellant/s : Basavegowda S/o Girigowda, aged
about 77 years, R/o Hosahundi
Village, Kasaba Hobli, Mysuru
Taluk.

(By **Sri Rajesha M.**, Adv.)

V/s.

Respondent/s : The Special Land Acquisition
Officer, Kabini Reservoir Project,
Andholana Circle, Ramakrishna
Nagara, Mysuru.

(By Learned **DGP.**)

Parties to I.A.No.I

Applicant/ appellant Basavegowda

V/s.

Opponent/ Respondent The Special L.A.O., Kabini
Reservoir Project, Mysuru.

Respondent

ORDERS ON I.A.I

I.A.No.I is filed by the appellant U/sec.5 of Limitation Act seeking an order to condone the delay of 4715 days in preferring the appeal in the interest of justice and equity.

2. In the accompanying affidavit to IA No.I, the appellant has stated that he has preferred appeal against the Judgment and decree passed in LAC No.430/2005 dated 30.06.2007 on the file of I Addl. Senior Civil Judge, Mysuru. He is poor and helpless person and could not able to prefer the appeal within stipulated time as he was not aware of the legal procedure. He was suffering from ill-health and financial crisis, there is delay in preferring the appeal. He has lost his valuable land for public purpose. If his application is not allowed he will be put to hardship, injury and inconvenience. On the other hand, no hardship will be caused to the other side. He states that balance of convenience is in his favour and accordingly he has prayed to allow the application.

3. The respondent has appeared through learned DGP and filed objection to I.A.No.I contending that the

application filed by the appellant is not maintainable either in law or on fact and liable to be dismissed. The appellant has not given any believable reasons to condone the delay of 4715 days and he had knowledge regarding Court order. The appeal is filed after lapse of more than 4715 days. Even, appellant has not made out any prima facie case. The appellant has already received the enhanced compensation amount as per award passed in LAC. Therefore, the appeal filed on the same judgment is not maintainable under the law. Consequently, this application filed seeking condonation of delay in preferring the said appeal is also not maintainable. Therefore, it is prayed to dismiss the application with cost.

4. The appellant is examined as PW1, but no documents are got marked. The respondent has not chosen to adduce any evidence.

5. Heard the arguments of learned counsel for appellant and learned DGP for respondent. I have also perused the records.

6. In view of the above facts and circumstances, the point that arise for my consideration is:

1. Whether the appellant has made out sufficient grounds to condone the delay as prayed in IA.No.I?

2. What order?

7. My finding on the above point is as follows :-

Point No.1 : In the **Affirmative**,

Point No.2 : As per final order for the following:

REASONS

8. **Point No.1**: The above appeal is preferred by the appellant U/sec.54 of Land Acquisition Act, 1894 to set aside the judgment and decree passed in LAC No.430/2005 dated 30.06.2007 on the file of I Addl. Senior Civil Judge, Mysuru and to fix the market value to the acquired land of appellant at the rate of Rs.6,33,980/- per acre, with all statutory benefits.

9. Appellant who is examined as PW1 in his evidence has reiterated the averments made in the accompanying affidavit to I.A.No.1 and specifically deposed that, due to lack of legal knowledge and poverty and

helplessness and ill-health, he couldn't prefer this appeal within the stipulated time. Recently he came to know the enhanced compensation awarded by the III Addl. Senior Civil Judge, Mysuru in LAC No.269/2012. His land and land of claimant in LAC No.269/2012 are situated at same village and acquired for the same purpose. He has lost his valuable land for public purpose. During cross-examination, PW1 states that, he had already received compensation. When suggested that he has preferred this appeal after coming to know about enhanced compensation received by his adjoining land losers, he says yes. He denied that since he had already received compensation and since he has not made out any reasonable grounds for condoning delay, he is not entitled for enhanced compensation.

10. The learned DGP for respondent submitted that the appellant has already received compensation as per award passed by the Trial Court. The appellant during cross-examination he admitted that, he had already received compensation. When once the appellant has received compensation amount as per award passed in LAC case, question of preferring appeal doesn't arise. Further, there is huge delay in preferring the appeal and no reasonable

grounds are made out for condoning the delay and accordingly, prayed to dismiss the application.

11. The learned counsel for appellant submitted that the delay in preferring the appeal is not intentional, but for bona-fide reasons. Due to lack of legal knowledge, he was not aware about preferring appeal in time. Recently, he came to know about award of enhanced compensation to the adjoining land losers and therefore, contacted his counsel and filed the appeal. If the delay is not condoned appellant will be put to much injustice and hence prayed to allow the application.

12. In view of the above submissions, it is necessary to rely upon the following decisions on the point of condonation of delay;

1. ILR 2017 KAR 3368 (Waheed Patel, since deceased by his LR's V/s. The Chief Engineer, Gulbarga and others.
2. Judgment dated 25.03.2014 passed by Hon'ble High Court of Karnataka, Dharwad bench in MFA.No. 25092/2012(LAC) (Somashekar V/s. The Special Land Acquisition Officer).

3. Order dated 19.07.2017 passed by the Hon'ble Supreme Court of India in Civil Appeal No.9288/2017 (K.Subbarayudu & others V/s. The Special Deputy Collector).

13. In the above decisions, the Hon'ble Apex Court and also the Hon'ble High Court of Karnataka by considering illiteracy, financial crises and other constraints of the land losers, have condoned the delay in preferring the appeal under the principle of equity, but have held that, equities can be balanced by denying the interest for the period of delay.

14. In this case, as noted above there is delay of 4715 days in preferring the appeal. Admittedly, this is an appeal filed under the provisions of Land Acquisition Act, seeking modification and re-fixing of market value for the acquired land of the appellant based on the award passed for higher compensation in favour of adjoining land losers. But, other side have not placed any material to discard the evidence of PW1 either by producing any oral or documentary evidence. As per the principle laid down in the above decisions, it is well settled law that the Courts should be liberal in condoning the delay, particularly in the matter

of present nature, where the farmers who are land losers are before this Court, seeking enhancement of compensation. Therefore, looking to the facts and circumstances of the case and by following the principles and guidelines laid down in the above decisions, if the delay in preferring the appeal is condoned with a condition that appellant is not entitled for interest for the period of delay, it will meet the ends of justice. Therefore, I answer Point No.1 in the **Affirmative**.

15. Point No.2: In view of my answer to point No.1 in the "**Affirmative**", I proceed to pass the following:

ORDER

I.A.I filed under Section 5 of Limitation Act is allowed. Delay of 4715 days in preferring the appeal is condoned.

However, the appellant is not entitled for the interest for the period of delay.

[Dictated to the Stenographer on Computer, typed script corrected and pronounced by me in the Open Court on this the 15th day of December 2023]

[D.Puttaswamy]
I Addl. District & Sessions Judge,
Mysuru.