

Reservoir Project, Mysuru.
Respondent

ORDERS ON I.A.I

I.A.No.I is filed by the appellant No.1 U/sec.5 of Limitation Act seeking an order to condone the delay of 5858 days in preferring the appeal in the interest of justice and equity.

2. In the accompanying affidavit to IA No.I, the appellant No.1 has stated that this appeal is preferred against the Judgment and decree passed in LAC No.454/2007 dated 22.11.2007 on the file of II Addl. Senior Civil Judge at Mysuru. That they are the owners of land bearing Sy.No.147 situated at Doddakaturu Village, Varuna Hobli, Mysuru Taluk, out of the said land an extent of $0.05\frac{3}{4}$ guntas of land has been acquired by the respondent for the purpose of Varuna Chanal. Her son had received award amount under protest and filed application U/Sec.18 of Land Acquisition Act, before the respondent, respondent has sent the reference to II Addl. Senior Civil Judge & CJM, Mysuru which has been numbered as LAC

No.454/2007. It is stated that due her ill-health, lack of legal knowledge, poverty and helplessness she was not able to contact her counsel to give necessary instructions to prefer the appeal with necessary documents. She has lost her valuable land for public purpose. The delay in preferring the appeal is not intentional and for bona-fide reasons. 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 appellants 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 5858 days and he had knowledge regarding Court order. The appeal is filed after lapse of more than 5858 days. Even, appellant had not made out any prima facie case. The appellant has already received the enhanced compensation amount in execution petition and filed the memo for fully satisfaction. The appellant has not paid the sufficient proper court fee on the basis of market value of the enhancement of compensation amount. Therefore, it is prayed to dismiss the application with cost.

4. The appellant No.1 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 appellants and learned DGP for respondent. I have also perused the records.

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

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

2. What order?

7. My findings on the above points are 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 challenging the judgment and decree passed in LAC No.454/2007 dated 22.11.2007 on the file of II Addl. Senior Civil Judge at Mysuru for remand to trial Court for lead fresh further evidence and production of documents and re-fix the market value to the acquired land of appellant with all statutory benefits.

9. Appellant No.1 who is examined as PW1 in her 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 she couldn't prefer this appeal within the stipulated time. Her land is very nearer to Mysuru City and the market value of her land is more than 70 to 80 Lakhs. Recently she came to know the enhanced compensation awarded by the III Addl. Civil Judge, Mysuru in LAC No.67/2023. She has lost her valuable land for public purpose. During cross-examination, PW1 states that, her

son had received compensation amount and she denied that she has not made out any reasonable grounds for condoning delay.

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 admitted that, her son had received compensation amount. 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. The appellant is poor and she was not aware about preferring appeal in time. Recently, she came to know about award of enhanced compensation to the adjoining land losers and therefore contacted her counsel and filed the appeal 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 5858 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 & 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, answering 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 5858 days in preferring the appeal is condoned.

However, the appellants are 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 6th day of March 2025]

[D.Puttaswamy]

I Addl. District & Sessions Judge,

Mysuru.