

KAMS010024652023



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

Dated this the 13th day of August 2024

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

: LAC(APPL)/78/2023 :

Appellant/s : C.Krishna S/o Late Devegowda @
Chikkanna, Aged about 63 years,
R/at # 174, Kamanakere Hundi
Village, Rammanahalli Post, Kasaba
Hobli, Mysuru Taluk/District.
(By Sri Devaraja A.N, Adv.)
V/s.

Respondent/s : The Special Land Acquisition
Officer, Kabini Reservoir Project,
Near Andolana Circle, MUDA
Building, Ramakrishna Nagara,
Mysuru.

(By Learned DGP.)

Parties to I.A.No.I

Applicant/ appellant

C.Krishna

Appellant

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 4015 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 the appeal against the Judgment and decree passed in LAC No.113/2010, dated 23.02.2011, on the file of Prl. Senior Civil Judge, Mysuru. The Trial Court has not fixed the market value of his acquired land. The IV Addl. Senior Civil Judge, Mysuru has fixed the market value in LAC No.42/2013 awarding the compensation at the rate of Rs.70,24,932/- per acre, dated 25.11.2017. The claimant in LAC No.42/2013 is his neighbouring land owner. His land is also situated in the same village, which was acquired under same notification and for the same purpose. It is further stated that, 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 and recently he came to know about the higher compensation awarded by the IV Addl. Senior Civil Judge, Mysuru through other land losers. Further due to financial constraints, he was not in a position to contact his counsel to instruct him to prefer the appeal within the stipulated period. He has lost his land for public purpose. If his application is not allowed, he will put to hards. On the other hand, no hardship would be caused to the other side. 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 facts and liable to be dismissed. The appellant has not given any believable reasons to condone the delay of 4015 days and he had knowledge regarding Court order. The appeal is preferred after lapse of more than 4015 days. The 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 said appeal is also not maintainable. The

appellant has not paid sufficient and proper Court fee and accordingly, it is prayed to dismiss the application with cost.

4. The appellant is examined himself 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 points that arise for my consideration are:

1. Whether the appellant 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.113/2010, dated 23.02.2011, on the file of Prl. Senior Civil Judge, Mysuru and thereby to remand the matter to the Trial Court to lead fresh evidence and to re-fix the market value to the acquired land of appellant with all other 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, he is poor and helpless person, he could not able to prefer the appeal within the stipulated period, since he was not aware of the legal procedure. Recently, he came to know about the higher compensation awarded by the Hon'ble IV Additional Senior Civil Judge, Mysuru through other land losers. He has lost his valuable land for public purpose. Due to his financial constraints, he was not in a position to contact his counsel to instruct him to prefer the appeal. During cross-examination, PW1 admits that he has received final compensation. When suggested that he has preferred this appeal after coming to know about enhanced

compensation received by his adjoining land loser, he says yes. He denied that 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 has admitted that ones he has got compensation and received less 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. He is poor and helpless person, he could not able to prefer the appeal within the stipulated period. Recently, he came to know about award of enhanced compensation to the adjoining land losers and therefore, contacted his counsel and preferred 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 4015 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, I answered Point No.1 in the **Affirmative.**

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

ORDER

I.A.I filed under Section 5 of Limitation Act is allowed. Delay of 4015 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 13th day of August 2024]

[D.Puttaswamy]

I Addl. District & Sessions Judge,
Mysuru.