

KAMS010077932024



**IN THE COURT OF THE III ADDL DISTRICT & SESSIONS
JUDGE, MYSURU**

Present: Smt.K.Bhagya, B.A.,L.L.B.

Dated this the 21st day of March 2025

LAC(APPL)/388/2024

Appellant:

Kalegowda

/vs/

Respondent:

The Special Land Acquisition Officer,
K.R.Project, Mysuru.

IA.No.I

Applicant:

Kalegowda

/vs/

Opponent:

The Special Land Acquisition Officer,
K.R.Project, Mysuru.

ORDER ON IA.No.I filed**U/s 5 of Limitation Act**

The appellant has filed an application U/s 5 of Limitation Act praying this Court to condone the delay of 5035 days i.e. 13 years in preferring the above appeal.

2. Along with the application, the appellant has filed his affidavit in which he has affirmed on oath stating that he has preferred the above appeal against the judgment passed in LAC.No.106/2004 dated 10/11/2010 by IV Addl Senior Civil Judge at Mysuru. Further stated that the said judgment was passed on 10/11/2010. He has applied for certified copy on 01/10/2024 and the copy delivered on 24/10/2024. Hence, there is a delay in filing the appeal. The said delay is not intentional and bonafide one. Further stated that he is an illiterate and aged person, suffering from ill health. Hence, he could not able to prefer the appeal within the stipulated period. As such there is a delay in preferring the appeal. If the application is not allowed, he will be put to hardship, injury and inconvenience. Hence, prayed to allow the application.

3. The respondent filed objections to the application by contending that the appellant has preferred the above appeal against the judgment passed in LAC.No.106/2004 dated 10/11/2010 by IV Addl Senior Civil Judge at Mysuru. The appellant states that the said judgment was passed on 10/11/2010. He has applied for certified copy on 01/10/2024

and the copy delivered on 24/10/2024. Hence, there is a delay in filing the appeal. The said delay is not intentional and bonafide one. Further stated that he is an illiterate and aged person, suffering from ill health. Hence, he could not able to prefer the appeal within the stipulated period. The said contentions are not correct. The reason given by the appellant is not correct. The appellant has not given sufficient documents to prove his ill health. Hence, prayed to dismiss the application.

4. Heard both side and perused the written argument of the appellant.

5. Now the points that arise for my consideration are:

1. Whether the appellant has shown sufficient cause for the delay in filing the appeal?

2.What Order?

6. My answers to the above points are as follows:-

Point No.1 : In the Affirmative.

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

REASONS

POINT NO.1:

7. The main appeal is filed U/s 54 of Land Acquisition Act praying to set aside the judgment passed in LAC.No.106/2004 dated 10/11/2010 by IV Addl Senior Civil

Judge at Mysuru and to re-fix the market value to the appellants acquired land with all other statutory benefits.

8. Here, the appellant has filed IA.I U/s 5 of Limitation Act to condone the delay of 5035 days i.e. 13 years in preferring this appeal. The appellant stated that due to ill health and as he is an illiterate and due to lack of legal knowledge, he has not preferred the appeal within the limitation period.

9. The appellant got examined himself on Sec.5 of Limitation Act application. He has filed his affidavit in lieu of his chief examination in which he has reiterated all the averments made in the appeal memo as well as sworn to the affidavit annexed to the IA filed U/s 5 of Limitation Act. Of course, he has not at all produced any documents. But, prayed to condone the delay of 5035 days i.e. 13 years in preferring this appeal. Of course, the respondent has cross-examined the appellant. He has also admitted that there is a delay in preferring this appeal. He has deposed in his cross examination as "ಸರ್ವೆ ನಂಬರ್ 77 ರಲ್ಲಿ 2 ಎಕರೆ 11 ಗುಂಟೆ ಜಮೀನು, ಭೂ ಸ್ವಾಧೀನವಾದಾಗ ನನ್ನ ಹೆಸರಿನಲ್ಲಿತ್ತು. ಈ ಬಗ್ಗೆ ದಾಖಲಾತಿಯನ್ನು ನಾನು ಹಾಜರುಪಡಿಸಿರುತ್ತೇನೆ. ಈ ಹಿಂದೆ ನಾನು ಈ ಭೂ ಸ್ವಾಧೀನದ ಬಾಬು ಪರಿಹಾರದ ಹಣವನ್ನು ಪಡೆದಿರುತ್ತೇನೆ ಎನ್ನುವುದು ಸರಿ. 2010 ರಿಂದ ಇಲ್ಲಿಯವರೆಗೂ ಮೇಲ್ಮನವಿಯನ್ನು ಸಲ್ಲಿಸಲು ತೊಂದರೆಗಳು ಬಹಳ ಇದ್ದವು. ನಾನು ಆಶ್ರೋಗ್ಯವಾಗಿದ್ದೇನೆ. ನನಗೆ ಆರೋಗ್ಯ ಸರಿ ಇರಲಿಲ್ಲ ಎನ್ನುವ ಬಗ್ಗೆ ಯಾವುದೇ ದಾಖಲಾತಿಗಳನ್ನು ಹಾಜರುಪಡಿಸಿರುವುದಿಲ್ಲ ಎನ್ನುವುದು ಸರಿ. ಯಾವುದೇ ಸಕಾರಣಗಳನ್ನು ತಿಳಿಸದೇ ಇರುವುದರಿಂದ ಈ ಅರ್ಜಿಯನ್ನು ಊರ್ಜಿತಗೊಳಿಸಲು ಬರುವುದಿಲ್ಲ ಎನ್ನುವುದು ಸರಿಯಲ್ಲ. ನಾನು ಸುಳ್ಳು ಸಾಕ್ಷ್ಯವನ್ನು ನುಡಿಯುತ್ತಿದ್ದೇನೆ ಎಂದರೆ

ಸರಿಯಲ್ಲ". Regarding this delay, the advocate for respondent has relied upon the judgment of **Hon'ble Supreme Court of India in SLP (Civil).No.31248/2018 between Pathapati Subba Reddy (Died) By LRs and Others Vs The Special Deputy Collector (LA)**, in which the Hon'ble High Court has relied upon the judgment passed in a case between **Maqbul Ahmad and Others Vs Onkar Pratap Narain Singh and Others**, in which it is held that the court cannot grant an exemption from limitation on equitable consideration or on the ground of hardship. The court has time and again repeated that when mandatory provision is not complied with and delay is not properly, satisfactorily and convincingly explained, it ought not to condone the delay on sympathetic grounds alone. In the same way the Hon'ble Apex Court has relied upon the judgment passed in a case between **Lanka Venkateswarlu Vs State of Andhra Pradesh and Others**, in which it is held that despite unsatisfactory explanation for the delay of 3703 days, had allowed the applications for condonation of delay, this Court held that the High Court failed to exercise its discretion in a reasonable and objective manner. High Court should have exercised the discretion in a systematic and an informed manner. The liberal approach in considering sufficiency of cause for delay should not be allowed to override substantial law of limitation. In the same way the Hon'ble Apex Court has relied upon the judgment in between Basawarj and Another Vs Special Land Acquisition Officer, in

which it is held that the expression 'sufficient cause' as occurring in Section 5 of the Limitation Act cannot be liberally interpreted if negligence, inaction or lack of bonafide is writ large. It was also observed that even though limitation may harshly affect rights of the parties but it has to be applied with all its rigour as prescribed under the statute as the courts have no choice but to apply the law as it stands and they have no power to condone the delay on equitable grounds. **By relying upon the above judgments and other judgments the Hon'ble High Court of Karnataka has observed in para 33 of the judgment as "In the above situation, we do not deem it proper and necessary ton interfere with the decision of the High Court refusing to condone the inordinate delay in filing the proposed appeal. The Special Leave Petition, as such, lacks merit and it dismissed".**

10. Further contended in the written argument on this IA.No.I that the present appellant has not made out any specific ground, not a piece of document is produced. The reading of the affidavit annexed to the application implies that the appellants have taken law for granted. The appellant had received the award under LAC which means that they have approached the court and contested the matter in which they got acquainted with law, courts, their counsel as well as the awards that were passed in other LAC cases. In such event the appellants cannot be considered as poor illiterate

people hence the wide approach canvassed by the apex courts cannot be applied to the appellants. If such applications are easily allowed after lapse of years the intention of Limitation Act will not met.

11. Thus, by relying upon the above cited judgment and by arguing like above, the advocate for respondent vehemently argued before this Court that the appellant has not shown any sufficient reason to condone the delay in preferring the appeal and hence prayed to dismiss the application.

12. Regarding the delay, this Court would also like to rely upon the judgment of Hon'ble Supreme Court of India **in Civil Appeal No.8331-8345 of 2022, between New Okhla Industrial Development Authority Vs Rameshwar @ Ramesh Chandra Sharma (Dead) Though Legal Heir & Anr**, the Hon'ble Supreme Court of India has condoned the delay of 22 years in filing the appeal by denying the statutory benefits. Regarding the delay, this Court would also like to rely upon the decision of **Hon'ble Apex Court in 2017 (3) CCC 283(SC)** in which the Hon'ble Apex Court condoned the delay of 3671 days in filing the appeal by observing that such benefit cannot be denied to the appellants. But, it can be allowed with a condition that interest will not be payable for the period of delay. In the same way, this Court would like to rely upon the decision of our own **High Court in 2017(4) AKR 434 (Kalburgi Bench)**, in which Hon'ble High Court of

Karnataka has condoned the delay of 6 years in filing the appeal by observing that the appellant is not entitled for interest for the delay period. In the same way, this Court would like to rely upon the judgment reported in **2020(2) KCCR SN 99 (SC), Supreme Court of India**, in which Hon'ble Apex Court has condoned the delay of 5½ years in preferring the appeal by observing that the appellants not entitled for statutory benefits and interest for delayed period. Further, in **ILR 1995 KAR 1137, between Saibanna Vs Assistant Commissioner & Land Acquisition Officer**, it is held as "Limitation Act, 1963 (Central Act No.36 of 1963) – Section 5: Land Acquisition Act, 1894 (Central Act No.1 of 1894) – Section 54 – Limitation Act provides for distinguishing all cases upon grounds to make exception : liberal approach in such cases based on cogent & justifiable reasons – **Agriculturists from rural background, lands being only family asset and source of livelihood, if quantum of compensation re-fixed & enhanced, just & fair all similarly situated persons be benefited**". Further, this Court would also like to rely upon the judgment of Hon'ble Apex Court in **Imrat Lal and Others Vs Land Acquisition Collector and others, (2014) 14 SCC 133**, in which the Hon'ble Apex Court has observed as "**11. We can take judicial notice of the fact that villagers in our country are by and large illiterate and are not conversant with the intricacies of law. They are usually guided by their co-villagers, who are familiar with the**

their proceedings in the Courts or the advocates with whom they get in touch for redressal of their grievance. Affidavits filed in support of the applications for condonation of delay are usually drafted by the advocates on the basis of half baked information made available by the affected persons. Therefore, in the acquisition affected persons. Therefore, in the acquisition matters involving claim for award of just matters involving claim for award of just compensation, the Court should adopt a liberal approach and either grant time to the party to file better affidavit to explain delay or suo motu take cognizance of the fact that large number of other similarly situated persons who were affected by the determination of compensation by the Land Acquisition Officer or the Reference Court have been granted relief”.

13. Here, this Court has observed very keenly that these appellants who are the land losers are rustic villagers. When they entered the witness box to file their affidavit in lieu of their chief examination on this IA.No.I, they even puzzled to name their/his/her father's name. They might have entered the Court hall for the first time and they scared because of the environment of the open court. So, they were unable to say their names and their father's name. These

things have been observed by this Court while they entered the witness box.

14. The learned counsel for appellant relied upon the judgment of **our own High Court, Dharwad Bench, in MFA.No.25092/2012 (LAC) between Somashekhar Vs The Special Land Acquisition Officer**, in which the Hon'ble High Court held that the appellant would not be entitled to interest for 4160 days but he is entitled to the costs incurred in this appeal. Further he has also relied upon the judgment of **Hon'ble Apex Court reported in 2017(3) CCC 283(SC), between K.Subbarayudu and Others Vs Special Deputy Collector**, in which it is held as **"(a) Land Acquisition Act, 1994 – Section 54 r/w section 5, Limitation Act, 1963 – appellant filing appeal after a delay of 3671 days – appeal dismissed by High Court on ground of delay – Appellant explaining the delay – High Court in a similar case condoning the delay of 3386 days on the condition that interest will not be payable for period of delay – Held, such benefit cannot be denied to the appellants"**. In the same way he has relied upon the judgment of **our own High Court, Kalburgi Bench reported in 2017(4) AKR 434 between Waheed Patel Vs Chief Engineer, ID, IP Zone, Gulbarga and Others**, in which the Hon'ble High Court held **"while considering appeal judicial notice of fact can be taken that villagers being illiterate not conversant with**

intricacies of 5 of Limitation Act and guided by co-villagers for readressal of their grievance – Court should apply liberal approach”.

15. In view of the above citations cited by this Court, Hon'ble High Court of Karnataka and Hon'ble Apex Court are of the view that the Court should adopt liberal approach in condoning the delay and the delay can be condoned with the condition that the appellant is not entitled for interest for the delay period in case of land acquisition cases. It is also equally settled that the delay of each and every day should not be looked into while considering the delay application. In the present case, in the affidavit, the appellant contended that he was not aware of the legal procedure and hence he was unable to prefer the appeal within a stipulated period.

16. Under the facts and circumstance of this case, if the delay is condoned and the appeal is disposed of on merits, no injustice would be caused to the respondent. On the other hand, if delay is not condoned, great injustice would be caused to the appellant. Hence, I answer Point No.1 in the **Affirmative**.

POINT NO.2:

17. In the result, I proceed to pass the following:-

ORDER

IA.No.I filed U/s 5 of the Limitation Act is hereby allowed.

The delay of 5035 days in preferring the above appeal is hereby condoned and the appellants are permitted to contest the appeal on merits.

(Dictated to the Stenographer directly on computer and then pronounced in the open court on this the 21st day of March 2025)

(K.Bhagya)
III Addl. District & Sessions Judge,
Mysuru.

(Order pronounced in open Court vide separate Order)

ORDER

IA.No.I filed U/s 5 of the Limitation Act is hereby allowed.

The delay of 5035 days in preferring the above appeal is hereby condoned and the appellants are permitted to contest the appeal on merits.

III AD & SJ, Mysuru.