

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 9215-9216 OF 2013  
(Arising from SLP(C) Nos.10819-10820 of 2012)

Vikrambhai Naranbhai Patel and another ..Appellants

versus

Deputy General Manager, O.N.G.C. and another ..Respondents

O R D E R

Leave granted.

These appeals are directed against order dated 10.1.2012 passed by the Division Bench of the Gujarat High Court whereby the application filed by the respondents for condonation of 1870 days delay in filing appeal against the judgment of 3rd Additional Senior Civil Judge, Gandhinagar (hereinafter described as, 'the Reference Court') was allowed.

The appellants' land measuring 11780 sq. meters situated at Pimplaj, Gandhinagar was temporarily acquired by the Deputy Collector vide order dated 5.7.1994 issued under Section 35(2) of the Land Acquisition Act, 1894 (for short, 'the Act') and possession thereof was handed over to Oil and Natural Gas Corporation Ltd. (ONGC) for drilling and extraction of oil.

The Land Acquisition Officer passed award dated 9.10.1997 under Section 35(3) and fixed rental compensation of the land at the rate of Rs.2.25 per square meter. On an application made by the appellants under Section 18 of the Act, the Collector made a reference to the Court. In the claim petition filed by them, the appellants pleaded that the rental compensation should be fixed at Rs.20 per square meter. This was controverted by the respondents and it was pleaded that the Land Acquisition Officer had rightly determined the rate of the rental compensation.

After considering the evidence produced by the parties, the Reference Court held that the appellants are entitled to rental compensation at the rate of Rs.7.50 per square meter. The operative portion of judgment dated 14.3.2006 of the Reference Court is reproduced below:

"The present land Acquisition Reference cases are hereby partly allowed.

The opponents are hereby directed to pay additional amount of

rental compensation at the rate of Rs.5=25 ps. per sq. mtr. over and above (Rs.7=50ps. minus Rs.2=25/- per sq. Mtr. awarded and paid by the learned Special Land Acquisition Officer = Rs.5=25 ps. per sq. mtr.) per year from the date of taking the possession at the rate of 9% p.a. for the additional amount of rent from the date of rent becomes due till realization and also to go on to pay the increased rate of rent as per the decision taken up on administrative side from time to time.

Opponents are directed to pay amount of rent from the date of taking of possession till the date of possession is handed over back to the applicant as stated above.

The amount(s) already received by the claimants are adjusted from the payable amounts."

Since the respondents did not pay the enhanced compensation, the appellants sent notice dated 7.8.2008 through their advocate Shri V.D. Trivedi to the General Manager, Land Acquisition Division, ONGC, Ahmedabad and the Special Land Acquisition Officer, ONGC, Ahmedabad requiring them to pay the compensation in terms of the judgment of the Reference Court. The notice was duly received in the office of ONGC but the respondents neither challenged the judgment of the Reference Court nor paid the amount to the appellants.

After about three years, the appellants' advocate sent another notice dated 15.4.2011 to the concerned officers which was received in the offices of both the addressees on the same day.

On receipt of the second notice, the respondents woke up from slumber and filed appeal on 26.7.2011 under Section 54 of the Act along with an application for condonation of 1870 days delay. Paragraph 4 of the application reads as under:

"4. The judgment and award was pronounced by the Court on 14.3.2006. The opponent has been represented by Mr. M.G. Thakore, advocate, who had not informed the petitioner the said matter having been decided. The petitioner came to know regarding the award having been passed when the original claimant's advocate addressed a letter to the petitioner calling upon them to pay the amount vide letter dated 15.4.2011. Immediately upon receipt of papers by the Land Acquisition Section, they were sent to the Legal Section on 2.5.2011 which were received by the Legal Section on 5.5.2011. Since the judgment was contrary to the judgment of Division Bench's judgment in various other matters delivered in matters of the Corporation, the Legal Section opined to prefer appeal and the papers were sent to the Land Acquisition Section. The Land Acquisition Section sent the papers to Director, New Delhi. The Director also on 16.6.2011 granted approval to prefer appeal on 16.6.2011 and the papers were received back in the Land Acquisition Section on 29.6.2011. Papers were sent to the High Court advocate vide letter dated 4.7.2011 which were received by him on the said date and appeal is preferred on 7th July, 2011. Hence, there is a delay of 1870 days in preferring appeal. The delay was mainly caused due to administrative exigencies and the fact that as large number of matters were decided together and the papers were mistakenly tagged along with other papers and were not traceable. The delay was also caused due to the fact that approval from various departments are required to be taken before taking a final decision to prefer the appeal."

(emphasis added)

In the reply affidavit filed by appellant No.1 on 8.11.2011, it was specifically averred that notice dated 7.8.2008 had been received in the offices of the General Manager, Land Acquisition, ONGC and Special Land Acquisition Officer on the same day and that the appeal was filed after receipt of the second notice dated 15.4.2011. In paragraph 7 of the affidavit, appellant No.1 also mentioned about the permanent acquisition of the land in 1999 and passing of an award and pleaded that he was entitled to enhanced rental compensation.

On 28.11.2011, the Division Bench of the High Court passed the following order:

"While hearing these applications for condonation of delay, Mr. Patel, learned advocate appearing on behalf of the respondents has drawn our attention to pages 38 to 39 of the file for the purpose of convincing that deliberate false statements have been made in the application for condonation of delay.

After going through these documents, we prima facie find that there is substance in the contention of Mr. Patel and therefore call upon the appellant to file a supplementary affidavit disclosing why they should not be prosecuted for making false statements in the application for condonation of delay and to explain those two documents by filing supplementary affidavit.

Such supplementary affidavit be filed within a fortnight from today. Let these matters appear on 12th December, 2011."

(emphasis supplied)

In compliance of the direction given by the High Court, Shri Sanatkumar, Senior Human Resource Executive in the LAQ section of ONGC filed affidavit dated 12.12.2011 and tried to explain the false statement contained in the application for condonation of delay by making the following assertion:

"I say and submit that as an employee of a Public Sector Undertaking, I had absolutely no intention of making any deliberate false statement in support of the application for condonation of delay. In any event, I tender unconditional apology for any statement made in the application for condonation of delay which may not be found to be correct, which however, was neither deliberate nor intentional.

At the outset, I say and submit that the respondent claimant have filed affidavit in reply opposing the application for condonation of delay. At page 38, the claimants have produced a copy of letter dated 7th August 2008 of Mr. V.D. Trivedi, Advocate. I say and submit that the said letter was received in the inward section of the Corporation on 7th August 2008 and was given entry No. 1519. However copy of judgment was not enclosed with the said letter. A copy of the inward register is annexed hereto and marked as ANNEXURE 'A' to the present affidavit. I say and submit that the said letter was marked by the In-Charge, LAQ Section to Mr. J.H. Kathiria, Senior HR-Executive looking after LAQ-LAR matters who appears to have misplaced the same as it is neither available in the LAQ-LAR section's records nor drill site file. I say and submit that subsequently he was transferred out of Ahmedabad and is at present not in the Ahmedabad Asset. At the cost of reiteration I say and submit that copy of the said letter is neither available in the LAQ-LAR section's record nor the Drill Site File and appears to have been misplaced. I would keep present for the perusal of the Honourable Court the entire file of the LAQ Section as well as the Drill Site File wherein page numbers have been serially given wherein the said letter is not available. From the afore referred it is clear that the said letter was not available in the LAQ-LAR section's record and in the circumstances was not referred to in the affidavit. I further say and submit that since the said letter was not available on the records, the

contents thereof were not known to me, and hence the same was not referred to in the application for condonation of delay. It is, however, pertinent to note that from the said letter, it does not appear that copy of the judgment was sent. I further reiterate that though notice was given on 7th August 2008, till 15th April 2011, no execution proceedings were instituted by the claimant, which is an extremely telling fact. It is also further clear that though the judgment was delivered on 14th March 2006, till 7th of August 2008, neither the claimant nor the advocate has given any intimation for nearly two and a half years."

(emphasis supplied)

Appellant No.1 filed reply affidavit dated 20.12.2011, paragraphs 4 and 5 of which read as under:

"4. At the outset, I state that the explanation that is given in the further affidavit in para 3 is false. If the notice of Advocate Shri V.D. Trivedi dated 7.8.2008 is perused, it is abundantly made clear that the award has been rendered in 2006. Now, when everything is incorporated in the notice, it was the duty of the applicant ONGC to inquire from their own advocate and to file an affidavit, which they did not do. The applicant expects judgments also to be supplied to it. Here also, the applicant ONGC comes out with same excuses. This is a matter from village Unava and therefore, it should be a separate file and separate actions were required to be taken by the applicant. The applicant comes out with a case no copy of the judgment was sent by Mr. VD Trivedi, Advocate appearing for the claimant and the letter was marked to in charge Land Acquisition Officer Shri JH Kandharya, HR Section (Executive) looking after land acquisition matters and they came out with a case that it was misplaced. In this case, the land was permanently acquired in 1999 and an award was passed by the Reference Court on 3.8.2006. Against that, the ONGC had preferred first appeal and that has been admitted and interim order has been passed. The case of the ONGC that the file in respect of temporary acquisition was lost, is something, which nobody would swallow and it is stated only for the purpose of escaping the consequences of making false statement in the application for condonation of delay.

5. It is respectfully submitted that at page no.39, notice was given by Advocate Shri V.D. Trivedi and it was presented in person on 7.8.2008 which is also annexed and notwithstanding that, an explanation is made where they would like to swallow this Hon'ble Court the explanation that they give irrespective of the claim of the claimants, who are agriculturists."

The Division Bench of the High Court neither adverted to the contents of the application filed by the respondents for condonation of delay nor considered the affidavits filed by the parties and condoned more than three years' delay by assuming that the litigations are filed by ONGC on the basis of information received from different departments and there was some communication gap between the officers of ONGC and the Advocate, who was engaged for filing application for condonation of delay. The Division Bench did notice the argument of the appellants' counsel that the respondents herein were guilty of making a false statement but did not accept the same. The substratum of the order passed by the Division Bench is reproduced below:

"After hearing the learned counsel for the parties and after going through the materials on record, we find that there is no doubt that some wrong statements were made in the applications for condonation of delay which has subsequently been explained by way of supplementary affidavit. After taking into

consideration the fact that the appellant is a Corporation and the litigations are filed on the basis of information received from different departments of the said Corporation, we are satisfied that there was some communication gap while giving instruction to the learned advocate for preferring these applications for condonation of delay.

Although Mr. Patel appearing on behalf of the claimants-respondents strenuously contended before us by relying upon the decision of the Supreme court in the case of Oriental Aroma Chemical Industries Ltd. vs. Gujarat Industrial Development Corporation and another reported in (2010) 5 SCC 459 that we should follow the principle laid down in the said decision, after going through the said decision, we find that in the said case the Supreme Court came to the conclusion that there was deliberate false statement made in the said application for condonation of delay. In the case before us, we have already indicated that due to communication gap wrong statement was made in the original applications, which has been subsequently explained by way of supplementary affidavit. We are, therefore, not prepared to treat the same as a case of "deliberate false statement" and thus, the principle laid down in the case of Oriental Aroma Chemical Industries Ltd. (supra) has no application to the facts of the present case."

We have heard Shri Sunil Gupta, learned senior counsel for the appellants and Shri Siddharth Luthra, learned Additional Solicitor General for the respondents and carefully perused the record.

The law of limitation is founded on public policy. The Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the Court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the Legislature. At the same time, the Courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation. The expression 'sufficient cause' used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the Courts to apply the law in a meaningful manner which serve the ends of justice. No hard and fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years this Court has advocated that a liberal approach should be adopted in such matters so that substantive rights of the parties are not defeated merely because of delay.

In C.A. Nos. 2970-2971 of 2012 - Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai, this Court noticed the propositions laid down in Ramlal v. Rewa Coalfields Ltd. AIR 1962 SC 361; Collector, Land Acquisition, Anantnag v. Mst. Katiji (1987) 2 SCC 107, P.K. Ramachandran v. State of Kerala (1997) 7 SCC 556, N. Balakrishnan v. M. Krishnamurthy (1988) 7 SCC 123, Vedabai v. Shantaram Baburao Patil (2001) 9 SCC 106, State of Nagaland v. Lipok AO (2005) 3 SCC 752 and observed:

"What needs to be emphasised is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the Courts cannot become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost. What colour the expression 'sufficient cause' would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it

may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay. In cases involving the State and its agencies / instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and / or its agencies / instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest."

(emphasis supplied)

In *Pundlik Jalam Patil v. Jalgaon Medium Project* (supra), this Court referred to several precedents advocating adoption of a liberal approach in condoning the delay and observed:

"Public interest undoubtedly is a paramount consideration in exercising the courts' discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. Prompt and timely payment of compensation to the landlosers facilitating their rehabilitation/resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the landlosers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act. Dragging the landlosers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest.

It is true that when the State and its instrumentalities are the applicants seeking condonation of delay they may be entitled to certain amount of latitude but the law of limitation is same for citizen and for governmental authorities. The Limitation Act does not provide for a different period to the Government in filing appeals or applications as such. It would be a different matter where the Government makes out a case where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it. In a given case if any such facts are pleaded or proved they cannot be excluded from consideration and those factors may go into the judicial verdict. In the present case, no such facts are pleaded and proved though a feeble attempt by the learned counsel for the respondent was made to suggest collusion and fraud but without any basis. We cannot entertain the submission made across the Bar without there being any proper foundation in the pleadings."

(emphasis supplied)

In Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another (2010) 5 SCC 459, the Court noted that the High Court had condoned more than four years' delay without advertent to the averments contained in the application filed by the respondent and by erroneously assuming that the delay was 1067 days and set aside the order of the High Court. This Court referred to the factual matrix of the case and observed:

"From what we have noted above, it is clear that the Law Department of Respondent 1 was very much aware of the proceedings of the first as well as the second suit. In the first case, Ms Rekhaben M. Patel was appointed as an advocate and in the second case Shri B.R. Sharma was instructed to appear on behalf of the respondents, but none of the officers is shown to have personally contacted either of the advocates for the purpose of filing written statement and preparation of the case and none bothered to appear before the trial court on any of the dates of hearing.

It is a matter of surprise that even though an officer of the rank of General Manager (Law) had issued instructions to Ms Rekhaben M. Patel to appear and file vakalat as early as in May 2001 and Manager (Law) had given vakalat to Shri B.R. Sharma, Advocate in the month of May 2005, in the application filed for condonation of delay, the respondents boldly stated that the Law Department came to know about the ex parte decree only in the month of January/February 2008. The respondents went to the extent of suggesting that the parties may have arranged or joined hands with some employee of the Corporation and that may be the reason why after engaging advocates, nobody contacted them for the purpose of giving instructions for filing written statement and giving appropriate instructions which resulted in passing of the ex parte decrees.

In our view, the above statement contained in Para 1 of the application is not only incorrect but is ex facie false and the High Court committed grave error by condoning more than four years' delay in filing of appeal ignoring the judicially accepted parameters for exercise of discretion under Section 5 of the Limitation Act."

(emphasis supplied)

In the light of the above, we shall now consider whether the High Court had rightly condoned more than five years and four months' delay in the filing of appeal by the respondents against the judgment of the Reference Court.

A reading of the impugned order amply supports the argument of the learned senior counsel for the appellants that the Division Bench of the High Court condoned the delay without even considering the explanation given by the respondents and the affidavits and the documents filed by the parties. What has surprised us is that the High Court did not advert to the contents of the application filed by the respondents for condonation of delay, four affidavits filed by the parties and order dated 29.11.2011 and decided the prayer for condonation of delay by assuming that litigations are filed on behalf of ONGC on the basis of information received from different departments and there was some communication gap while giving instructions to the learned Advocate for preferring the application for condonation of delay. These grounds did not even find a place either in the application filed on behalf of the respondents for

condonation of delay or the affidavit of Shri Sanatkumar. Learned senior counsel appearing for the respondents could not draw our attention to any document or other evidence to show that cases are filed on behalf of ONGC on the basis of information received from different departments or that there was communication gap between the advocate and the officers. Thus, there is no escape from the conclusion that the High Court condoned the delay by assuming certain facts which did not exist.

The pleadings of the parties and the documents produced by them clearly show that notice dated 7.8.2008 sent by the appellants through their advocate was duly served upon the addressees, i.e., General Manager, Land Acquisition Division, ONGC, Ahmedabad and Special Land Acquisition Officer, ONGC, Ahmedabad. Notwithstanding this, they did not file appeal in the next three years. Rather, they woke up from slumber only after receiving second notice dated 15.4.2011. In paragraph 4 of the application, the respondents blamed their advocate Shri M.G. Thakore by stating that he had not informed about the judgment of the Reference Court and the concerned officer came to know about the same on receipt of letter dated 15.4.2011. This statement was ex-facie false because notice dated 7.8.2008 sent by the appellants was duly received by the concerned officers. In the affidavit filed by him on 12.12.2011, Shri Sanatkumar had to admit that the notice had been received in the inward section of the Corporation on 7.8.2008 and the same was marked to Shri J.H. Kathiria, Senior HR-Executive. According to Shri Sanatkumar, Shri Kathiria appeared to have misplaced the notice and on that account he could not know content thereof.

The cover up operation conducted by the respondents by filing affidavit of Shri Sanatkumar was a crude attempt to mislead the High Court. Unfortunately, the Division Bench of the High Court did not bother to read the application and the affidavits filed by the parties and condoned the delay by a cryptic and non-speaking order, which, in our considered view, is legally unsustainable. In our view, the High Court could not have overlooked the patently false and misleading statement made in the application for condonation of delay and order dated 28.11.2011 passed by it and condoned more than 5 years and 4 month's delay by assuming certain facts/practice which did not exist.

In the result, the appeals are allowed, the impugned order is set aside and the application filed by the respondents before the High Court for condonation of delay is dismissed. As a sequel to this, the appeal filed by the respondents under Section 54 of the Act is dismissed as barred by time. However, it is made clear that the appellants shall be entitled to rental compensation only till the date of permanent acquisition of their land.

With a view to ensure that the appellants are not fleeced by middlemen, we issue the following directions:

- i) The appellants shall furnish their bank account numbers to respondent Nos. 1 and 2 within a period of six weeks.
- ii) Within next 2-1/2 months, the concerned authority shall deposit the amount of compensation, etc., in the bank account of the appellants.

.....J.  
[G.S. SINGHVI]

NEW DELHI;  
OCTOBER 17, 2013.

.....J.  
[C. NAGAPPAN]

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).10819-10820/2012

(From the judgement and order dated 10/01/2012 in FA No.1947/2011,CA No.8748/2011 with FA No.1948/2011, CA No.8749/2011 of the HIGH COURT OF GUJARAT AT AHMEDABAD)

Vikrambhai Naranbhai Patel and another ..Appellants

versus

Deputy General Manager, O.N.G.C. and another ..Respondents

Date: 17/10/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE C. NAGAPPAN

For Petitioner(s) Mr. Sunil Gupta, Sr. Adv.  
Mr. Jatin Zaveri, Adv.  
Mr. Neel Kamal Mishra, Adv.

For Respondent(s) Mr. Siddharth Luthra, ASG  
Mr. Ashish Kumar, Adv.  
Ms. Supriya Juneja, Adv.  
Mr. G.S. Bedi, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Leave granted.

The appeals are allowed in terms of the signed order.

| (Parveen Kr.Chawla) | | (Phoolan Wati Arora) | |  
| Court Master | | Court Master | |

(signed order is placed on the file)