

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9213 OF 2013
(Arising from SLP(C) No.9772/2012)

V.J. Bhadrasingh

..Appellant

VERSUS

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

..Respondents

O R D E R

Leave granted.

The appellant, who succeeded in convincing Principal Senior Civil Judge, Gandhinagar (hereinafter described as "the Reference Court") to enhance the rental compensation in lieu of the temporary acquisition of his land from Rs.3.75 per sq. meter per annum to Rs.12.70 per sq. meter per annum, has questioned the legality and correctness of order dated 10.1.2012 passed by the Division Bench of the Gujarat High Court condoning 1235 days delay in the filing of appeal by the respondents herein under Section 54 of the Land Acquisition Act, 1894 (for short, 'the Act').

On a requisition sent by the Oil and Natural Gas Corporation Limited (ONGC) sometime in 2000, the concerned Deputy Collector invoked the provisions of Section 35(2) of the Act and handed over possession of the appellant's land measuring 17,165 sq. meters to ONGC for drilling and extraction of oil.

After about two years, the Land Acquisition Officer passed an award for payment of rental compensation at the rate of Rs.3.75 per sq. meter per annum. The appellant did not feel satisfied and filed an application under Section 18 for determination of the amount of compensation by the Court. Thereupon, the Collector made a reference which was registered as LAR No.97/2007.

In the claim petition filed by him, the appellant prayed for award of market rent at the rate of Rs.20 per sq. meter. This was contested by the respondents, who pleaded that the determination made by the Land Acquisition Officer was just and proper. After analyzing the evidence produced by the parties, the Reference Court decided the reference vide judgment dated 30.11.2007 and held that the landowner is entitled to rental compensation at the rate of Rs.12.70 per sq. meter per annum.

The respondents neither challenged the judgment of the Reference Court by filing an appeal within the period of limitation prescribed under the Act nor paid the enhanced compensation to the appellant. The latter sent notice dated 16.7.2008 to General Manager,

Land Acquisition Division, ONGC, Ahmedabad, Special Land Acquisition Officer, ONGC, Ahmedabad and District Collector, Gandhinagar enclosing therewith copies of the judgment of the Reference Court. Collector, Gandhinagar also sent communication dated 5-7.8.2008 to Chief Manager, ONGC, Ahmedabad and forwarded the applications made by the landowners including the appellant for payment of compensation and asked the addressee to take action on the applications. However, nothing was done by the concerned officers of ONGC.

After more than three years and four months, the respondents filed an appeal under Section 54 of the Act. They also filed an application for condonation of 1235 days delay. In paragraphs 2 and 3 of the application, the respondents averred as under:

"2. The applicant states that judgment and award in the L.A.R. No.97 of 2007 came to be passed by the Learned Principal Senior Civil Judge, Gandhinagar, on 30/11/2007. The certified copy thereof was delivered on 05/01/2008. Thereafter the Learned Advocate for the applicant before the lower court sent the papers to the applicant/ Department. Thereafter the papers were sent by the applicant to the higher authorities competent to grant approval for preferring appeal together with submissions by the applicant for preferring an appeal. The competent authority of the applicant after completing all the procedures and formalities granted approval. The papers were then handed over to the advocate for the applicant before the High Court thereafter for filing appeal before the High Court. The Advocate for the applicant thereafter without any delay prepared the memorandum of Appeal and Civil Application for stay after seeking necessary information from the applicant. However, in the meantime the period of limitation making the appeal expired. Thus, there is delay of 1235 days caused in presenting the appeal. The delay has occurred despite the fact that there was no intention to abandon the proceedings and despite due diligence on the part of the applicant for the reasons as set out hereunder. This application is therefore filed seeking for condonation of delay caused in presenting the appeal which deserves to be granted in the interest of justice.

3. It will be seen from the above that the delay caused in filing the appeal has occasioned because the applicant had to get the approval from the competent authorities of the applicant looking to the stakes and legal issues involved in the matter. The papers were required to be sent to the competent authority of the applicant for its approval and this process took some time and hence the delay has been caused in filing the appeal. Applicant submits that the delay caused in filing the aforesaid appeal deserves to be condoned in the interest of justice."

On 24.10.2011, Shri S.G. Bhatt (Sanatkumar Ganpatram Bhatt), who gave his designation in the subsequent affidavit as Senior Human Resource Executive in the LAQ Section of ONGC, filed an affidavit to explain the delay. Shri Bhatt blamed the Advocate Shri C.M. Raval by stating that he did not give information about the judgment of the Reference Court and the Corporation did not know about the judgment till a copy thereof was made available by the appellant's Advocate Shri V.D. Trivedi on 18.4.2011. This is evinced paragraphs 2 and 3 of the affidavit, which read as under:

"2. I state that judgment and award in the L.A.R. No.97 of 2007 came to be pronounced on 30/11/2007 and a certified copy of the same was applied by the advocate of the original claimant on 1/12/2007. It is further submitted that the certified copy was ready for delivery on 5/1/2008. However, the advocate of the Corporation Mr. C.M. Raval did not inform the Corporation about the passing of the impugned order. As a result of which, the Corporation was never in a position to know the passing of the actual order till the aforesaid mentioned certified copy was given by the advocate of the claimant Mr. V.D. Trivedi to ONGC on 18/4/2011. As soon as, the said certified copy was received

by the land acquisition section on 18/4/2011, the same was forwarded along with necessary instructions to legal section on 29.4.2011. It is further submitted that the said order was received by legal section on 4/5/2011. The legal sections of the Corporation opined to file an appeal on 2/6/2011 and final approval of the ED-AM was granted on 8/6/2011 along with necessary instructions to land acquisition Department on 13/6/2011.

3. The papers were then handed over to the advocate for the applicant before the High Court thereafter for filing appeal before the High Court. The Advocate for the applicant thereafter without any delay prepared the Memorandum of Appeal and Civil Application for stay after seeking necessary information from the applicant and the same was filed on 15/7/2011. However in the meantime the period of limitation making the appeal expired. Thus there is delay caused in presenting the appeal. The delay has been occurred despite the fact that there was no intention to abandon the proceedings and despite due diligence on the part of the applicant for the reasons as set out hereunder. This application is therefore filed seeking for condonation of delay caused in presenting the appeal which deserved to be granted in the interest of justice."

The appellant filed affidavit dated 17.11.2011 and contested the application for condonation of delay by asserting that the explanation given by the respondents should be rejected because they had become aware of the judgment of the Reference Court in the year 2008 itself.

After considering the pleadings and affidavits filed by the parties, the Division Bench of the High Court passed order dated 29.11.2011, the relevant portion of which is extracted below:

"After hearing the learned counsel for the parties and after going through the material on record, we find substance in the contention of the learned advocate for the respondent that prima-facie the appellants have made out a deliberate false statement that prior to the issue of notice they had no knowledge of the impugned award. In such circumstances, we direct the appellants to affirm supplementary affidavit dealing with Annexure-R1 and R2 of the affidavit-in-reply. Such affidavit be given within a week from today."

(emphasis supplied)

In compliance of the direction given by the High Court, Sanatkumar Ganpatram Bhatt filed affidavit dated NIL, December, 2011. This time, he made complete somersault and blamed a Class III employee, namely, Mr. Kalpesh R. Shah for the delay by stating that he was looking after rental compensation matters and through inadvertence he did not see the copy of judgment dated 30.11.2007 annexed with the claimant's letter. Paragraphs 3 and 4 of the second affidavit of Shri Bhatt read as under:

"3. I say and submit that letters of the claimant dated 16 July 2008 and marked as inward no.1233. A copy of inward register is annexed here to and marked as "Annexure A" in this further affidavit. I further say and submit that the in-charge LAQ had marked this letter to One Mr. Kalpesh R Shah who was looking after rental compensation matters and through inadvertence the said official mistook the matter for payment of rental compensation and did not see the copy of the judgment dated 30 November, 2007 which was annexed thereto. I say that the concerned staff member is a class .three employee who was unable to understand the importance of the judgment of the Lower Court and as a result of which it was not forwarded by him to the LAQ-LAR section. The applicant tenders unconditional apology to this Honorable court for the said error and prays that the

same shall not happen again.

4. I further say and submit that immediately when letter of the advocate was received on 18 April 2011 by the LAQ-LAR section, records were perused and it was found that the copy of judgment was not available in LAQ-LAR section. Immediately the advocate of the lower court was contacted and he was asked to obtain copy of the judgment and explain in detail for delay in informing the corporation. I reiterate at the cost of the repetition that I was not aware at the time of filing of application regarding the above referred copy of judgment having been received by the Corporation, and hence No deliberate false statement has been made before the Honorable Court."

The appellant filed reply affidavit dated 20.12.2011 to highlight falsehood of the statement made in the affidavits of Sanatkumar Ganpatram Bhatt. He pointed out that notice dated 16.7.2008 sent by him and letter dated 5/7.8.2008 sent by Collector, Gandhinagar were delivered to the officers of ONGC along with copy of the judgment of the Reference Court, but they did not bother to challenge the same and made a false statement about the alleged negligence of the Advocate. The appellant also averred that he had personally gone to the office of ONGC, Land Acquisition Section and handed over copy of the letter of the Collector. The relevant portions of paragraph 4 of the appellant's affidavit dated 20.12.2011 are reproduced below:

"If one were to peruse para No. 2 at page No.2, the applicants make an authentic statement that the learned advocate for the applicants of the lower Court had sent the papers to the applicants and those papers were sent by the applicants to the higher authority to grant approval for preferring an appeal together with the submissions of the applicants for preferring the application for condonation of delay. That the explanation given in the further affidavit is false and incorrect and the same are made with a view to escape from the prosecution. On the contrary, such explanation should have been stated in the application for condonation of delay and not in the further affidavit for the simple reason that a notice was sent by the Advocate of the applicants on 16.7.2008 and this notice was accompanied by copy of the award, copy of the judgment and the other relevant papers. In response of this, no mistake could have been committed by the applicant ONGC of the type that is indicated in the further affidavit for the purpose of escaping from the prosecution. This is so because pursuant to the notice given by the Advocate of the claimants in 2008, the Collector had sent a letter on 5.7.2008 addressed to the General Manager, ONGC, Chandkheda. [See page No. 18 of the compilation]. The Collector has indicated in his letter, pursuant to the notice that was sent by the claimant that proper actions were required to be taken for the purpose of computation of the compensation and the copy of the notice-cum-application the Collector had sent to the General

Manager. This was possessed by the applicant ONGC in the year 2008, but they did sweet nothing. It is not possible for the applicant ONGC to say that this was not received by them and in the letter, everything is indicated by the Collector. The Collector stated in his letter, claim of the claimant, address, survey numbers and the name of village and also date of the application, this could not have been missed. No explanation is given about the actions that were taken by the applicant ONGC for the purpose of making payment of compensation to the claimant. This is a most tell tale circumstance, which could not have been missed by the applicant ONGC or its various departments dealing with the matters. Copy of the letter by the Collector addressed to the applicant ONGC was endorsed to the claimant and the claimant was asked to pursue the matter with the applicant ONGC. Pursuant to this, the

claimant personally went to the office of the applicant ONGC, Land Acquisition Section and handed over the copy of the letter of the Collector. Thus, in 2008, two events occurred, which are not referred to by the applicant ONGC, because the applicant ONGC now is trying to conceal everything from the Court with a view to escape from the liability of prosecution."

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 appellant's 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."

Shri Sunil Gupta, learned senior counsel for the appellant argued that the impugned order is liable to be set aside because the High Court condoned more than 3 years delay without even adverting to the explanation given by the respondents, the affidavits filed by the appellant and by erroneously assuming that the delay was caused due to some communication gap between officers of ONGC and their Advocate. Learned senior counsel emphasized that the explanation given by the respondents for delayed filing of the appeal was based on falsehood and argued that the High Court committed grave error by condoning 1235 days delay in the filing of appeal. In support of his argument, Shri Gupta relied upon the judgments of this Court in Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation and another (2010) 5 SCC 459 and Pundlik Jalam Patil v. Jalgaon Medium Project (2008) 17 SCC 448.

Shri Siddharth Luthra, learned Additional Solicitor General

appearing for the respondents fairly conceded that the impugned order does not reflect consideration of the application filed by the respondents for condonation of delay and the affidavits filed by the parties but argued that this Court should not interfere with the discretion exercised by the High Court to condone the delay because dismissal of the appeal as barred by time will put heavy financial burden on ONGC. Shri Luthra submitted that contradictions in the averments contained in the application and the affidavits filed on behalf of the respondents were on account of lack of understanding on the part of the concerned officers and there was no deliberate attempt to mislead the Court.

We have considered the respective arguments / submissions and carefully scrutinized 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 propositions laid down in the aforementioned judgments, we shall now consider whether the High Court had rightly condoned more than three 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 appellant 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 affidavits of Shri Sanatkumar Ganpatram Bhatt. 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.

At this stage, we may also take cognizance of the documents and the affidavits filed by the parties, perusal of which leave no manner of doubt that the respondents had received copy of the judgment of the Reference Court sometime in July, 2008 and they were very much aware of the fact that the landowners were demanding higher compensation in terms of the judgment of the Reference Court. Therefore, the statement made by Shri Sanatkumar Ganpatram Bhatt in the first affidavit that Shri C.M. Raval, Advocate had not informed the Corporation about passing of the judgment by the Reference Court

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 appeal is allowed in terms of the signed order.

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

(signed order is placed on the filed)
