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Court : Karnataka Kalaburagi

Decided On : Mar-27-2017

Judge : B.Veerappa

Appeal No. : MSA No. 614 of 2011 (LA)

Appellant : Waheed Patel and Others

Respondent : The Chief Engineer, ID, IP Zone, Gulbarga and Others

Advocate for Def. : Sri. Gourish S. Khashampur

Advocate for Pet/Ap. : Sri. A.M.Biradar

Judgement :

(Prayer: This MSA filed under Section 54 (2) of the Land Acquisition Act, against the judgment and decree dated 15.06.2011 passed in LACA No. 56/2010 on the file of IV Addl. District Judge, Gulbarga, dismissing the appeal filed against the judgment and award dated 09.09.2004 passed in LAC No.977/2001 on the file of the Prl. Civil Judge (Sr. Dn.), Gulbarga.)

1. The legal representatives of the claimant filed the present appeal against the judgment and award dated 15-06-2011 made in LACA No.56/2010 on the file of the IV Addl. District Judge, Gulbarga, dismissing the appeal on the ground of delay

of 1944 days in filing the appeal.

Facts of the case.

2. It is the case of the claimant that he is the owner of the land bearing Survey No.3/6 measuring 1 acre 3 guntas dry land situated at Belkota Taluka, Gulbarga District. The said land was submerged under Gandori Nala Project. The respondents issued preliminary notification under Section 4(1) of the Land Acquisition Act on 31.07.1997 and followed by final notification under Section 6(1) of the Land Acquisition Act. The Special Land Acquisition Officer, respondent No.3 has awarded compensation of Rs.15,000/- per acre dry land with all statutory benefits on 05-05-2000. Not satisfied with the award, the present appellant / claimant filed reference petition under Section 18(1) of the Land Acquisition Act, before the Principal Civil Judge, Senior Division, Gulbarga. Who after hearing both the parties by judgment and award dated 09.09.2004 has enhanced compensation of Rs.53,550/- per acre dry land with all statutory benefits. Being aggrieved by the said judgment and award, the claimant filed appeal before the IV Additional District Judge, Gulbarga under Section 54 of the Land Acquisition Act, who after hearing both the parties has dismissed the appeal, mainly on the ground that there was a delay of 1944 in filing the appeal. Hence the present appeal filed.

3. I have heard the learned counsel for the parties to the lis.

4. Sri. A.M.Biradar, learned counsel for the appellants contended that the Additional District Judge has dismissed the appeal mainly on the ground of delay and latches without adverting to the case on merits only on technicalities. He contended that when the substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. He further contended that in an identical circumstances the land acquired for the same purpose, this court in MFA 1525/2007 has enhanced the compensation of Rs.1,15,600/- per acre to the dry land. Therefore mere technicality, the claimant should not deprived which he is entitled legally, since he lost the land for the project. Therefore he sought to allow the present appeal by setting aside the impugned judgment and award.

5. Per contra, Smt. Archana Tiwari, learned Additional Government Advocate for respondent No.3 and Sri. Gourish S. Khashampur, learned counsel for respondent No.2, sought to justify the impugned judgment and award passed by the appellate court and contended that the present appellants were watching the other persons when, the other persons got the enhanced compensation, he filed the present appeal before the lower appellate court. Since there was a delay of 1944 days, the lower court has rightly dismissed the appeal on the ground of delay and latches. The learned counsel for respondent No.2 and 3 further contended that merely because, some other land, for the same project has granted Rs.1,15,600/- per acre is not a ground to allow the appeal, since there is a delay of nearly 6 years in filing the appeal. Therefore sought for dismissal of the present appeal. The learned counsel for respondent No.2 and 3 sought to rely upon the dictum of the Hon ble Supreme Court in the case of Brijesh Kumar and others V/s State of Haryana and others, reported in AIR 2014 SC 1612.

6. In view of the aforesaid rival contentions urged by the learned counsel for the parties, the only point that arises for consideration in the present appeal is:-

Whether the impugned judgment and award passed by the IV Addl. District Judge, Gulbarga dismissing the appeal on the ground of delay and latches is justified in the facts circumstances of the present case?

7. I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties and perused the entire material on record carefully.

8. It is an undisputed fact that the land of the claimant was acquired by the respondents for the purpose of Gandorinala Project under a preliminary notification dated 31.07.1997 and followed a final notification under Section 6(1) of the Land Acquisition Act. The Special Land Acquisition Officer respondent No.3 has awarded compensation of Rs.15,000/- per acre dry land with statutory benefits on 05-05-2000. It is also undisputed that on the application filed under Section 18(1) of the Land Acquisition Act, the reference court has enhanced the compensation of Rs.53,550/- per acre dry land with all statutory benefits on 09.09.2004. The claimant filed appeal before District Court and there was a delay of 1994 days in filing the appeal. The appellant - claimant explained the delay

stating that he was an agriculturist, the agriculture was main source of income of the appellant for livelihood. The respondents have acquired the agriculture land of the claimant under submerged in the project, therefore the claimant has lost the income from the agriculture land and he was compelled to obtained loan, hand loan from the villagers for livelihood. Respondents have caused enormous delay in depositing compensation amount, enhanced by the Civil Court and have deposited amount and the claimant has received compensation amount and same has been repaid the loan amount which was obtain by the claimant from the relatives in the village. Therefore due to financial crises and constrains, the claimant unable to file the appeal before the District Court within the time and further contended that he came to know that the High Court of Karnataka in similar circumstances has determined the market value at Rs.1,15,600/- per acre dry land arising out of the same preliminary notification dated 31.07.1997 in MFA No.1525/2007 (LAC) on 18.08.2009 and in the said case one Shivasharanappa was the appellant who came to the village Belkota for the purpose of attending the Mahiboob Subani Ursa (Jatra) held on 24.03.2010 and met the claimant, informed the about enhancement of compensation amount awarded by this court.

9. Thereafter claimant collected Xerox copy of MFA and after making some financial arrangement for the expenses to be incurred i.e. court fees and miscellaneous charges. He came to Gulbarga on 04.04.2010 without making further delay and requested the advocate at Gulbarga to prefer appeal. It is further case that the claimant that he was a poor former and depending upon the agriculture and his land has been acquired by the respondents for the project. Thereby the claimant was deprived of his lands which has been personal cultivation by him. Therefore he requested to condone the delay in filing the appeal.

10. It is also not in dispute that the land acquired in Survey No.110/2 measuring 13 acres 08 guntas under the same notification issued under Section 4(1) of the Land Acquisition Act dated 31.07.1997. The land looser had approached this court in MFA No.1525/2007, this court considering the delay in filing the appeal of 482 days denying the interest has enhanced the compensation of Rs.1,15,600/- in the case of Shivasharnappa. It is also not in dispute that the lands of said

Shivasharnappa and land of the present appellants are situated at Belkota village, Gulbarga Taluka and acquired under the same notification by the respondents for the construction of Gandori Nala project (same project). The 3rd respondent Special Land Acquisition Officer has awarded Rs.15,000/- per acre dry land and reference court has awarded Rs.53,550/- and this court in the appeal filed by the said Shivasharnappa has determined at Rs.1,15,600/- per acre. No doubt in the present case, there was a delay of 1944 days in filing the appeal. However the material on record clearly indicates that in a case of payment of compensation to the claimant, who were the land owner and whose land is taken away by the acquisition, however the land owners similarly situated and whose lands was taken over the same notification dated 31.07.1997 have been able to get a compensation of Rs.1,15,600/- per acre, but the unfortunately the Lower Appellate court dismissed the appeal on the ground of delay and latches.

11. It is not in dispute that the claimant who is an agriculturist, whose land has been acquired by the respondents for Gandori Nala Project and in the affidavit it is specifically stated by the claimant that due to financial crises, he did not filed the appeal within the time and he has borrowed the loan for livelihood and he has to repay the same and respondents have caused enormous delay in depositing the compensation amount and after the such amount received, he has to repay the loan obtained by him from the persons in the village. This court can take judicial notice of the fact that villagers in our country are by and large illiterate, not conversant with the intricacies of law, they are usually guided by their co-villagers, who are familiar with proceedings in Courts or advocates with whom they get in touch for redressal of their grievance. The affidavits filed in support of application for condonation of delay are usually drafted by the advocate on the basis of half-backed information made available by the effected persons. Therefore, in the acquisition matter involving the claim for award of compensation, the court should adopted a liberal approach and either grant time to party to file better affidavit to explain delay or suo motu take cognizance of fact that they are situated persons who were effected by the determination of the compensation by the reference court had been granted relief.

12. In the present case, the other persons like the claimant have approached the reference court, thereafter the District court and this court whose lands acquired under the same notification under the same project in the same village able to get the compensation of Rs.1,15,600/- per acre dry land and the claimant cannot be discriminated merely because there is a delay. The claimant is identically situated and there is no reason to meet out a different treatment to him. Of course the appellant - claimant is not entitled the interest for delay in filing the appeal before the appellate court. It is also clear from the records, though the appeal filed before this court in the year 2011 came to be dismissed for default on 16.07.2012 and restored only 13-07-2016. Therefore the appellants are not entitled any interest nearly 6 years in filing the appeal before the District Court and from 16.07.2012 to 13.07.2016 before this court. But they are entitled compensation on for with the similarly situated persons whose lands acquired for the same project under the same notification and got compensation of Rs.1,15,600/- per acre dry land. Though learned counsel appearing for the respondents No.2 and 3 relied upon the dictum of the Hon ble Supreme Court in the Brijesh Kumar and others v/s State of Haryana and others reported in AIR 2014 SC 1612 decided on 24.03.2014 held as under:

12. It is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.

13. In State of Karnataka and others v/ S.M./ Kotrayya and otehrs, (1996) 6 SCC 267, this Court rejected the contention that a petition should be considered ignoring the delay and laches on the ground that he filed the petition just after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. The court observed that such a plea is wholly unjustified and cannot furnish any ground for ignoring delay and laches.

13. But the subsequent judgment (one of the Hon ble Judge of the Hon ble Supreme Court, who was part of the Brijesh Kumar case stated Supra is also party) in the case of Dhiraj Singh (Dead) Through Legal Representatives and others v State of Haryana and others decided on 21.07.2014, reported in (2014) 14 SCC 127, considering the provisions Section 23, 23(1-A) and 28 of the Land Acquisition Act, held that Identically situated landowners Entitled to same compensation Landowners whose lands were acquired under same notification awarded compensation @ Rs.200 per square yard which was upheld by Supreme Court Hence the appellants also entitled to enhanced compensation @ Rs.200 per square yard instead of Rs.101 per square yard as awarded However, for period of delay in approaching High Court, no interest awarded as under:-

12. In fact, in a matter arising out of the same notification, in Civil Appeals Nos.617-19 of 2012, this Court had rendered a judgment dated 17.01.2012 condoning the delay of 4644 days and enhancing the compensation to Rs.200 per square yard. A perusal of the counter-affidavit filed by the respondents makes it clear that the rate of Rs.200 per square yard fixed in Horam case (LPA NO.920 of 1994) has been upheld by this Court by dismissing the special leave petition against the said judgment. A perusal of the said order makes it clear that it relied upon dismissal orders passed in various other special leave petitions whereby the aforesaid rate had been upheld.

14. The appellants are identically situated and there is no reason to meet out a different treatment to them. We also note that, while in these cases, the High Court had refused to condone the delay and dismissed the LPAs of the appellants, other LPAs were allowed by the High Court itself by condoning the delay of the same magnitude in the same circumstances.

15. Equities can be balanced by denying the appellants interest for the period for which they did not approach the Court. The substantive rights of the appellants should not be allowed to be defeated on technical grounds by taking hypertechnical view of self-imposed limitations. In the matter of compensation for land acquisition, we are of the view that approach of the court has to be pragmatic and not pedantic.

16. The principles regarding condonation of delay particularly in land acquisition matters, have been enunciated in Collector (LA) v. Katiji, wherein it is stated in para 3 as under:

3. The legislature has conferred the power to condone delay by enacting Section 5 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on merits . The expression sufficient cause employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which sub-serves the ends of justice- that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realised that;

(1) Ordinary a litigant does not stand to benefit by lodging an appeal late.

(2) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

(3) Every day s delay must be explained does not mean that a pedantic approach should be made. Why not every hour s delay, every second s delay? The doctrine must be applied in a rational common sense pragmatic manner.

(4) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

(5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

(6) It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

14. Therefore the contentions of the learned counsel for the respondents that merely because similarly situated persons able to get the higher compensation, the appellants are not entitled cannot be accepted. Admittedly in the present case, there is no dispute either of the respondents that similarly situated, persons whose land acquired under the same notification dated 31.07.1997 under the same project called Gandori Nala Project and in the same village Belkota, have been awarded compensation of Rs.1,15,600/- per acre dry land. Therefore the respondents cannot be discriminate between the claimants whose lands acquired by the respondents for the same project on the ground of delay as held by the Supreme Court stated Supra. However the present appellants are not entitled interest on the delay of 1944 in filing before lower appellate court and the dismissing of the present appeal for default on 16.02.2012, but it was restored only on 13.07.2016 after 4 years. The appellants are not entitled interest for the said period also. For the reasons stated above, the point raised in the present Misc. Second Appeal has to be held in the negative holding the District Court was not justified in dismissing the appeal on the ground of delay and latches.

15. The Hon ble Supreme Court while considering the provisions of Section 5 of the Limitation Act while condoning the delay of 1110 in the case of Imrat Lal and others V/s Land Acquisition Collector and others, reported in 2014 SCC 133 as under.

13. In view of the above discussion, the appeal is allowed, the impugned order is set aside and the delay in filing RFA No.5477 of 2011 by the appellants is condoned.

14. At this stage, Shri. Narender Hooda very fairly stated that instead of remanding the case to the High Court for consideration of the appeal filed by the appellants under Section 54 of the Act, the Court may grant relief to them in terms of the judgment dated 01.10.2010 passed in Sudama v. State of Haryana and connected matters but this order may be confined to the present case.

15. We appreciate the statement made by the learned Senior Additional Advocate General and hold that the appellants shall be entitled to enhanced compensation at the rate of Rs.1216 per square yard with other statutory benefits. However, it is made clear that the appellants shall not be entitled to interest for the period of delay i.e. 1110 days. The respondents shall pay the amount of enhanced compensation and other statutory benefits to the appellants within a period of six months from today.

16. The Hon ble Apex Court in a latest judgment while considering the provisions of Section 23 and 28 of the Land Acquisition Act in the case of Mahesh V/s State of Madhya Pradesh and another, reported in (2016) 7 SCC 589, held Compensation Enhancement of Land in question similar to land which was covered under judgment of High Court in Subhas case held as under:

1. Leave granted. It has been submitted by the learned counsel for the appellant that the land in question is similar to the land which was covered under the judgment of the High Court in Subhas v. State of M.P. In view of the said fact, the compensation awarded to the appellant is enhanced so as to bring it on a par with the lands covered under the judgment dated 19.12.2014 delivered in Subhas v. State of M.P.

2. If the respondents are aggrieved by this order, it will be open to the respondents to approach this Court by way of an application so that the matter can be reconsidered.

3. It is clarified that no interest shall be paid in respect of the period for which the filing of petition in the High Court had been delayed.

4. The appeal is disposed of as allowed with no order as to costs.

17. In view of the aforesaid reasons and the dictums of the Hon ble Supreme Court in the case of, Dhiraj Singh, Imrat Lal, Mahesh stated Supra. The appeal is allowed. The impugned judgment and award dated 15.06.2011 passed by the IV Addl. District Gulbarga is set aside. The application filed for condonation of delay before lower appellate Court is allowed exercising the powers under Section 54 of

the Land Acquisition Act and the appellants are entitled the compensation of Rs.1,15,600/- per acre dry land with all statutory benefits.

18. However the appellants are not entitled interest for the delay of 1944 days in filing the appeal before lower appellate court and also not entitled interest from the date of dismissal of the present appeal for default on 16.02.2012 to 13.07.2016 on which date the appeal was restored.

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