

State of U.P. and ors. Vs. Khursheed Khan and ors.

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Court : Allahabad

Decided On : Sep-23-2008

Reported in : 2008(4)AWC3659

Judge : Amitava Lala and; A.P. Sahi, JJ.

Appellant : State of U.P. and ors.

Respondent : Khursheed Khan and ors.

Disposition : Appeal dismissed

Judgement :

Amitava Lala, J.

1. This appeal has been preferred by the State as against the claimants upon being aggrieved and/or dissatisfied with the judgment passed by the Court of reference on 25th January, 2006. The appeal is delayed by 145 days as per the report of the concerned department of this High Court. Accordingly, the appeal is made with a supportive application for condonation of delay. Therefore, we are of the view that such application for condonation of delay will be taken up first for the purpose of its perusal and passing an appropriate order.

2. We have gone through such application extensively. We find that the certified copies of the judgment and decree were applied on 28th January, 2006, which

were made ready for delivery by the concerned court below on 8th February, 2006 and 13th February, 2006 respectively and were delivered on 10th February, 2006 and 14th February, 2006 respectively. The opinion of the District Government counsel was received by the Executive Engineer, Construction Division-11, Public Works Department, Bulandshahr on 18th February, 2006. The Executive Engineer wrote a letter to the Superintending Engineer, Bulandshahr on 27th February, 2006 for granting consent to file the appeal. Executive Engineer also requested the Special Land Acquisition Officer, Bulandshahr vide letter dated 1st March, 2006 for getting the details of amount of court fees. Superintending Engineer, in turn, on 8th March, 2006 made certain queries about filing of the appeal and the Executive Engineer replied the same on 22nd March, 2006. The Executive Engineer also wrote a letter on that very day to the Superintending Engineer for sanctioning the amount of court fees and reminders were given on 15th May, 2006 and 29th May, 2006 by sending information to the Chief Engineer and Government. On 15th April, 2006, the matter was referred to the Chief Engineer, Meerut for granting sanction of amount of court fees. On 19th April, 2006, the Chief Engineer, Meerut referred the matter to the Special Secretary, Public Works Department for obtaining permission of the Law Department. The State Government granted permission for filing the appeal vide its order dated 26th May, 2006, which was received in the office of the Executive Engineer on 6th June, 2006. A contact was made with the office of the learned Chief Standing Counsel by such department on 12th June, 2006. However, further time was required for collecting the Court fees. On 29th June, 2006 the Chief Engineer made efforts to get the Court fees. After some persuasion ultimately the Government vide letter dated 22nd August, 2006 has granted the sanction for an amount of Rs. 2,77,463 towards court fees. Thereafter, vide letter dated 28th August, 2006 the Superintending Engineer requested the Engineer-in-Chief for final allocation of budget of court fees. Thereafter, the appeal was prepared and filed before this Court. Although ultimately the date of filing has not been given therein but we find that the appeal was filed on 6th October, 2006. According to the State, there was no intentional delay on the part of it in preferring the appeal, therefore, the same will be condoned. In support of his contention, learned Counsel appearing for the appellants relied upon a judgment in *State of Haryana v. Chandra Mani and Ors.* :

2002(143)ELT249(SC) , wherein it has been held that on account of impersonal machinery and inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community, but considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible.

3. According to us, factually the permission was given by the State for preferring the appeal when the period of preferring it was already over. Even after permission the appellants took considerable period of time to arrange court fees. Therefore, apparent reluctance and- red-tapism are not ignorable factors here. Secondly, the appeal on the part of the State has to be preferred by its representative authorised under the law. We have great amount of doubt as to whether an Assistant Engineer of a district attached to a concerned construction division of the Public Works Department can be construed as authorised representative of the State. Had he not been so, the appeal would have been supported by an affidavit of competency in absence of authorisation. Therefore, whether the condonation of delay is outcome of Governmental endeavour or individual endeavour is doubtful. State executives are authorised by law but those who are not authorised, they are supposed to file an affidavit of competency to represent the case on behalf of the State, otherwise the appeal cannot be said to be properly represented appeal of the States Thirdly, it is true to say that the Court normally gives some latitude towards the State or any authority unlike an individual but such latitude is a discretionary order of the Court depending upon the circumstances of each case. No precedent can be created by one case for the other. In a case where permission was given by the State to file appeal even after the requisite period and even thereafter took three months' time for financial sanction, no latitude would be shown to such type of litigant. Therefore, we do not find any cogent ground for condoning the delay except the cause which has been specifically raised by the State-appellants before us by showing paragraph 6 of a Division Bench judgment of this Court in State of U.P. and Anr. etc. etc. v. Vijai Prakash Bqjpai etc. etc., 2007 (1) ADJ 189 (DB). Paragraph 6 of such judgment speaks as follows:

6. Importance of the merit and genuineness are also guiding factors for the Court to determine the necessity of condonation of delay.

4. So far as the last point which has been raised by the State-appellants is concerned, we have to see what is merit and genuineness for preferring the appeal in this regard. According to the appellants, Special Land Acquisition Officer (hereinafter in short called as 'S.L.A.O.') allowed the compensation of Rs. 20,000 per bigha but the Court of reference fixed the compensation at the rate of Rs. 300 per square yard. This, according to the appellants, is exorbitant in nature. Therefore, according to them, it is a good ground for condoning the delay on account of merit and genuineness. However, we find that figure was ascertained on the basis of a comparable figure of similar type of land, where rate of compensation was fixed at Rs. 300 per square yard. Against this background, we have called upon the appellants to show what is total area of the land, which was answered by saying that it is 14 biswa, which is approximately 3/4th of a bigha. Therefore, according to us, considering such smallness of the area and comparable price as fixed by the Court of reference on the basis of similar type of land in L.A.R. No. 372 of 1990, Jagdish Prasad v. State of U.P., against which also the appeal was preferred but the same was dismissed by the High Court and subsequently S.L.P. was also dismissed by the Supreme Court, the question of merit and genuineness, as raised by the appellants herein, seems to be insignificant in nature. Hence, the same can also not be a good ground for condoning the delay in preferring the appeal.

5. Learned standing counsel contended before us that the respondents had no right of reference before the District Court since the compensation amount fixed by S.L.A.O. was accepted without any protest. Hence, the cause is also hit by a Division Bench judgment of this Court in Ghaziabad Development Authority v. Chandra Bhan and Ors. 2008 (6) ADJ 42 (DB). According to us, in such judgment this Court has considered the issue of approbate and reprobate. It is correct to say that whenever a person has received the amount of compensation without protest, he has no right to challenge the same by way of reference in the District Court under Section 18 of the Land Acquisition Act, 1894 (hereinafter called as the 'Act'). If it is being done, the same will be hit by the principles of approbate and

reprobate. The relevant part of the judgment is quoted hereinbelow:

Again in *Land Acquisition Officer v. Shivabai and Ors.* AIR 1997 SC 2642, the Supreme Court held that it is now settled position in law that the claimants, who receive the compensation under protest and who make application under Section 18(1), alone are entitled to seek reference. Therefore, it is implied that who has received the compensation without protest cannot be held entitled to raise any objection before the Court of reference. One cannot take two advantages when the law is explicit that reference cannot be maintainable when the claimant/s received the compensation without protest. There is a maxim known as *qui approbat non reprobatur*, meaning thereby one who approbates cannot reprobate. It is a fundamental principle of general application that if a person of his own accord, accepts a contract on certain terms and works out the contract, he cannot be allowed to adhere to and abide by some of the terms of the contract which proved advantageous to him and repudiate the other terms of the same contract which might be disadvantageous to him. This principle, though originally borrowed from Scots Law, is not firmly embodied in English Common Law. According to it, a party to an instrument or transaction cannot take advantage of one part of a document or transaction and reject the rest. That is to say, no party can accept and reject the same instrument or transaction. Although a person cannot be debarred from enforcing his fundamental rights on the ground of estoppel or waiver, the aforesaid principle which prohibits a party to a transaction from approbating a part of its conditions and reprobating the rest, is different from the doctrine of estoppel or waiver. A plaintiff is not permitted to 'approve and reprove'. It is used to express the principle embodied in doctrine of election-namely, that no party can accept and reject the same instrument. The doctrine of election is not however confined to instruments. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. That is to approve and reprove the transaction. So the maxim that a person cannot 'approve and reprove' is only one application of the doctrine of election, and that its operation must be confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto. The doctrine of 'approve and reprove' is only a species of

estoppel, it applied only to the conduct of parties. As in the case of estoppel it cannot operate against the provisions of a statute. Law does not permit a person to both approbate and reprobate. The doctrine of estoppel by election is one of the species of estoppel in pais (or equitable estoppel) which is a rule in equity. By that rule, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. No inconsistent stand can be taken in the Court of law.

6. Mr. Y.D. Sharma, learned Counsel appearing on behalf of the respondents-claimants, contended before us that they have filed an application to S.L.A.O. for redetermination of the amount of compensation under Section 28A of the Act, which after having been rejected the respondents-claimants have filed this application before the Court of reference.

7. According to us, there is a difference between making a reference under Section 18 of the Act directly and upon being refused under Section 28A of the Act. Section 28A of the Act was inserted in the Act with effect from 24th September, 1984. This is a special process for the purpose of redetermination of the quantum of compensation. Such redetermination may be caused by the Collector to avoid any discrimination and one can make it irrespective of making application under Section 18 of the Act. As soon as a law gives certain relief in its particular provision to avoid discrimination amongst the parties and if a party in spite of accepting the compensation makes an application to redetermine it to avoid the discrimination, the principle of approbate and reprobate cannot be applicable in such case. This type of application cannot be compared with Section 18 of the Act. Moreover, if any application is made under Section 28A of the Act and the same is rejected giving a right to a party to make a reference under Section 18 of the Act by virtue of Section 28A(3) of the Act, it will tantamount to acceptance of compensation with protest. As and when an application is made by an applicant under Section 28A of the Act for redetermination of compensation or for any other specific purpose provided therein and was rejected, it cannot be construed that the stand taken by the applicant is without demur. Therefore, embargo as put forth by this Court in Chandra Bhan (supra) cannot be applicable in this case.

8. Therefore, in totality we do not find any genuine cause to condone the delay.
9. Accordingly, the application for condonation of delay is dismissed, however, without imposing any cost.
10. Consequently, the appeal is also dismissed without imposing any cost.