

Delhi Development Authority Vs. Rajinder Kumar

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Court : Delhi

Decided On : May-07-2015

Judge : V.K.Shali

Appellant : Delhi Development Authority

Respondent : Rajinder Kumar

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + R.S.A No.233 of 2013 Date of Decision:

7. h May, 2015 % DELHI DEVELOPMENT AUTHORITY Through: Appellant Mr.Ajay Verma, Adv. versus RAJINDER KUMAR Through: Respondent Mr.Rajiv Ranjan Dwivedi, Adv. CORAM: HON'BLE MR. JUSTICE V.K. SHALI V.K. SHALI, J.

(ORAL) 1. This is a regular second appeal filed by the appellant against the judgment dated 16.05.2005 passed in RCA No.29/05 along with an application under S.5 of the Limitation Act, 1963. Vide the impugned order the first appeal of the appellant was dismissed on the ground of being barred by limitation.

2. Briefly stated the facts are that a suit for permanent injunction was filed by the respondent/plaintiff against the appellant/DDA claiming ownership of the suit property,. It was alleged in the plaint that the DDA had threatened to demolish the suit property illegally and without any show cause notice. It was prayed that DDA

be restrained from demolishing the suit property being property No.139-A (215 sq. yds.) and 139-H (80 sq. yds.) falling in khasra No.548/135 which admeasures 58 RSA23313 Page 1 bighas and 7 biswas situated within the abadi deh area and lal dora limits of village Savitri Nagar out of the Revenue Estate of village Sheikh Sarai, Delhi. DDA vide notification dated 24.9.1983 had regularised 11 colonies including Savitri Nagar, Delhi. The aforesaid property was part of the offer No.999A dated 11.05.1962 of Village Sheikh Sarai, Delhi.

3. It is the case of the respondent/ plaintiff that he had purchased the suit property bearing No.139-A and 139-H vide a registered sale deed dated 19.12.1988 in March 1981 and March 1982 respectively. The sale deed was registered on the basis of a certificate issued to the effect that the ADM (IA) Delhi vide Office Order No.22317 dated 7.12.1988 had declared that the notification under S.6 of the Land Acquisition Act 1894 had lapsed.

4. The aforesaid stand of the respondent/plaintiff was vehemently contested by the DDA on the grounds that the suit land was an acquired land since 1962 which is prior in time to the alleged sale deed and was part of khasra No.150 and therefore the respondent/plaintiff had no title, right interest in the suit land. Further the maintainability of the suit was challenged before the trial court.

5. The learned trial court holding that the defendants have failed to prove their case and that the respondent/plaintiff is in legal possession of the suit property passed a decree in favour of the respondent/ plaintiff vide order dated 19.08.05. Subsequently DDA filed an appeal along with an application under S.5 of the Limitations Act 1963 with a prayer for condonation of delay of 168 days. The same was dismissed by the first appellate court vide order dated 16.05.2005. Leading to the present second appeal. RSA23313 Page 2 6. The learned counsel for the appellant has stated that the appellate court fell into an error by holding that the appellant has failed to show any cause much less sufficient cause for condonation of delay under S.5 of the Limitation Act, 1963 (the Act) in filing of the appeal. Reliance has been placed on the findings rendered in S. Ganesharaju vs. Narasamma 2012 (4) SCALE152 wherein it has been held as under:

15. The expression sufficient cause as appearing in the S.5 of the Indian Limitation Act 1963 has to be given a liberal construction so as to advance substantial justice.

16. Unless the respondents are able to show malafide in not approaching the court within the period of limitation generally as a normal rule the delay should be condoned. The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits meaning thereby that such technicalities have been given a go by.

17. Rules of limitation are not meant to destroy or foreclose the rights of the parties they are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.

18. We are aware of the fact that refusal to condone delay would result in foreclosing the suitor from putting forth his cause there is no presumption that delay in approaching the court is always deliberate.

19. In fact it is always just, fair and appropriate that matters should be heard on merits rather than shutting the doors of justice at the threshold since sufficient cause has not been defined thus the courts are left to exercise the discretion to come to the conclusion whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter....

RSA23313 Page 3 7. The learned counsel for the appellant/DDA relying on the aforesaid has contested that the appellant/DDA has been able to show sufficient cause for the delay and in furtherance of the same, pursuant to the directions of this court, an affidavit of its Commissioner (Land Management) explaining the delay and the action taken against the delinquent persons has also been filed.

8. It is stated by the learned counsel for the appellant that the primary reason for delay in filing the present appeal was that though the matter was appropriately

entrusted to counsel to file this second appeal but the counsel failed to do so and merely returned the file after nearly six and a half years. It is further contended that the public interest should not be allowed to suffer on account of any administrative act on the part of any official of the department or for that matter the counsel as the approach of the court should be pragmatic, not pedantic.

9. The learned counsel for the appellant/DDA has further relied on the judgment rendered in Collector, Land Acquisition vs. Katiji (1987) 2 SCC107 wherein it has been categorically stated by the Supreme Court that the courts should adopt a liberal and justice oriented approach. And that the words sufficient cause must be given a liberal construction and the matter must be heard on merits rather than being dismissed at the threshold on mere technicalities. It was further observed that ordinarily the litigant does not stand to benefit by lodging an appeal late and the refusal to condone the delay can result in a meritorious matter being dismissed which will only defeat the justice.

10. In furtherance of the aforesaid arguments the learned counsel for the appellant has also relied on the following judgments: State of Nagaland RSA23313 Page 4 vs. Lipok AO (2005) 3 SCC752 N Balakrishnan vs. M. Krishnamurthy (1998) 7 SCC123 and Esha Bhattacharjee vs. Raghunathpur Nafar Academy (2013) 12 SCC649 11. It is the case of the appellant/DDA that the appellate court failed to consider that the trial court fell into an error by deciding the matter in absence of a final and enforceable demarcation report and in ignoring the documents relied upon by the DDA and duly proved as per law which clearly established the factum that the suit property was a part of khasra No.150. Further no findings with respect to the ownership of the property were rendered by the trial court as it merely observed that the plaintiff was in clear possession of the suit property. It is further stated that the Union of India which is a necessary party was not impleaded and therefore the judgment was bad in law and the factum of which was not considered by the appellate court.

12. The learned counsel for the respondent has vehemently opposed the application for condonation of delay on the grounds that the same does not lay out a sufficient cause for such egregious amount of inordinate delay. Reliance has

been placed on the judgment rendered in *Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai* (2012) 5 SCC157 wherein the order of the high court was set aside by the apex court stating that the explanation offered being non specific and conspicuously remaining silent about dates, events, persons involved in and credible explanation offered for said delay. In the light of the aforesaid judgment it is contested by the learned counsel for the respondent that the appellant has failed to detail out the reason behind the aforesaid delay and has given a vague and ambiguous statement and therefore the said delay cannot be condoned. RSA23313 Page 5 13. It is contended by the learned counsel for the respondent that the present appeal is not maintainable as there is a delay of 2942 days in preferring the present appeal despite the fact that the first appeal was also dismissed on the ground of the petition being barred by limitation.

14. The learned counsel for the respondent has placed reliance on the findings rendered by the Honourable Supreme Court in *Oriental Aroma Chemical Industries limited v. Gujarat Industrial Development Corporation and Another* (2010) 5 SCC459 wherein the application of condonation of delay was dismissed on the grounds that the law department of the respondents did not approach the high court with clean hands and failed to provide a sufficient cause for delay and laches in filing of the appeal. It was further directed an enquiry be initiated to fix the accountability of the defaulting officials and losses suffered be recovered from them.

15. I have heard both the parties and gone through the record. The appellant has stated that the first appellate court erred in not considering that the judgment of the trial court suffers from infirmities and is bad in law and in furtherance thereof has laid down the grounds which are not reiterated for the sake of brevity. In my considered opinion the aforesaid grounds are all questions of fact and do not involve any substantial question of law and therefore are not required to be looked into by this court as the same fall beyond the scope of S.100 CPC. 16. The present second appeal is on the short point of condonation of delay. It is pertinent here to mention that there was not only a delay of 168 days in filing the first appeal but there is also a subsequent delay of 2942 days in filing of the instant appeal. The reason attributed to the aforesaid delay is RSA23313 Page 6 mainly due to the

default on account of the delinquent officers of DDA and the counsel engaged and an affidavit has been filed by the DDA in support thereof. The learned counsel for the respondent has contested the application stating that sufficient cause has not been laid out by the DDA.

17. It is trite law that the power of the court to condone the delay is a discretionary power and is to be used to advance substantial justice and not to dismiss a matter at the very threshold on the basis of mere technicalities especially where a case involves questions of public policy. It is also true and correct that the litigant does not stand to benefit by lodging an appeal late. The Honourable Supreme Court in *Collector Land Aquisition (supra)* has stated that, 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.

It clearly flows from the aforesaid that not only is the court empowered court to bypass technicalities in order to deliver justice but is also duty bound to do so.

18. The slow mobility of matters in government departments is almost proverbial. Government decisions unlike decisions made by private parties/individuals are slow and encumbered on account of procedural delays, and impersonal machinery as officers are never directly hit or hurt by the decisions made on behalf of the government. A bureaucratic organisation hesitates and debates, moves through massive amount of paperwork and procedures both horizontally and vertically to finally arrive at a conclusion which if, is not satisfactory the entire process is repeated again causing tremendous delay in all its workings. Even though the legislature has time and again made laws and given directions for timely completion of governmental task but due to the vastness of the RSA23313 Page 7 governmental machinery and the intrinsic and complicated age old procedural systems the same has become a herculean task to achieve. It is therefore unfair and unrealistic to put the government on the same footing as the private parties.

19. The words sufficient cause under the Act have not been defined to the teeth for the reason that the same are to be interpreted in the light of the facts and circumstances of each individual case as no blanket approach is possible. The argument of the respondent that the DDA has failed to show sufficient cause does

not hold water as the DDA has filed the affidavit of the Commissioner to explain the reasons for the delay and laches and the actions taken against the delinquent officials. As it falls from the aforesaid reasoning certain laxity has to be provided to the government as it is not made of a single individual but is a complex machinery. Further the interest of public at large cannot be compromised for the delinquency on part of certain officials or the counsel unless and until the bonafides of the party are suspected. In the instant case there is no reason to suspect the bonafides of the DDA.

20. The judgment rendered in Oriental Aroma Chemical Industries Limited (supra) relied upon by the respondent does not apply to the instant case as the same is distinguishable on the facts as it involved a case where the government department had tried to mislead the court by making false statements in the application for condonation of delay. Further the judgment rendered in Maniben Devraj Shah (supra) also is not applicable to the instant case, as the reasons attributed to the delay were vague and ambiguous and bereft of any details whereas in the instant case the affidavit not only states the grounds for delay but also the disciplinary actions taken against the defaulting officers and the counsel who was RSA23313 Page 8 entrusted the responsibility of prosecuting the matter. It is also distinguishable on the facts as it involves an inordinate delay of more than 7 years in filing the first appeal whereas in the instant case there is a delay of only 168 days in filing the first appeal. Therefore the precedent laid down in the aforesaid cannot be binding in the present case as the court cannot blindly apply the dictum of one case on another without any judicious application of mind.

21. In State of Jharkhand vs. Krishna Pradhan & ors. (2010) 13 SCC327 the Honourable Supreme court while allowing the application for condonation of delay has held as follows:

It appears that cases are coming up before this Court, and probably before the High Courts also, where appeals or writ petitions are filed after inordinate delay and an explanation is sought to be given in the application for condonation of delay in such cases filed by the government or the State Authorities that the file was moved from one desk to another or the approval was sought from the higher

authority which took considerable time. We feel that the beneficiary of the judgment may be hand in glove with the officials in the Government Department who deal with the files, and files are suppressed for a long period, and then the appeal before the High Court or Supreme Court is filed after a long delay to get the appeal dismissed on the ground of delay. Huge amounts of public money or public property may be involved and the Government will be the loser on the technical point of limitation in such cases. This racket has been going on for a long time not only before the Supreme Court but also before the High Courts. Now the time has come that this racket should come to an end and the officials responsible for this be given severe punishment.

22. In the light of the aforesaid, I am of the considered opinion that the learned appellate court erred by rejecting the appeal on mere technicalities by not allowing the application for condonation of delay and by not appreciating the case on merits. In principle a litigant must RSA23313 Page 9 have at least one opportunity to have his case reassessed on merits in order to ensure that justice is not compromised due to procedural infirmities. The learned appellate court without considering the merits of the case and based on unarticulated thought process dismissed the appeal on technical aspects leaving the litigant with no recourse to get his case reassessed. Similarly, so far as the delay in filing the present appeal is concerned, no doubt there is delay of more than 2,000 days, but the length of delay may not be material and the bona fides of the party cannot be doubted.

23. Therefore on the basis of the aforesaid reasoning I am of the considered opinion that that the delay ought to be condoned in order to advance substantial justice and the case be remanded back to the appellate court to have it reassessed on the merits. 24. Accordingly the appeal is allowed and the matter is remanded back to the Ld. ADJ, first appellate court to be decided on merits after treating the application for condonation of delay as deemed to have been allowed. Parties to appear before the learned District & Sessions Judge, South East District, New Delhi on 04.07.2015. V.K. SHALI, J MAY07 2015/ad RSA23313 Page 10