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Union of India Vs. Pushpa Rani

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Court : Delhi

Decided On : Jul-25-2011

Judge : P.K.Bhasin, J.

Acts : Code of Civil Procedure (CPC) - Section 151 - Order 41 Rule 3A; Limitation Act - Section 5

Appeal No. : CM APPL. NO. 2805/11 AND LA.APP.71/2011

Appellant : Union of India

Respondent : Pushpa Rani

Advocate for Def. : Mr. S.K Sethi, Adv.

Advocate for Pet/Ap. : Mr.Ramesh Ray, Adv.

Judgement :

1. This application has been filed by the appellant under Order 41 rule 3A and Section 151 of the CPC and section 5 of Limitation Act seeking condonation of delay of 367 days in filing the present appeal against the judgment dated 13.05.2010 passed by the learned Additional District Judge in LAC no. 641 A/08 whereby the amount of compensation awarded by the Land Acquisition Collector @ Rs 15,70,000/- per acre in respect of acquired land of the respondent was enhanced to Rs.19,13,765/- per acre.

2. The reasons for condonation of delay pleaded in this application are reproduced below:

" That the learned additional judge pronounced the impugned order on 13.5.2010. The application for the certified copy of the same was applied on 20.5.2010 and the same was received by the counsel who defended the appellant on 22.5.2010. After receiving the certified copy of the same was sent to the Deputy Legal Advisor (land and building)for his opinion . The D.L.A (L&B) opined on 7.7.2010 to file the appeal before this Hon'ble Court against the impugned judgment . the file was then put up before the Principal Secretary(Land And Building Department) on 9.7.2010 for approval, who approved for filing the appeal before this Hon'ble Court on the same day. The opinion of DLA(L&B), after approval was received at the land building department (legal cell) at Tis Hazari Courts. After following due procedure the DLA , land building Department,Tis Hazari, Courts sent the certified copy of judgment along with the approved opinion vide his letter dated 20.7.2010 which was received at the office of the Deputy Commissioner (North West) on 23.7.2010 . The file along with the certified copy of the judgment and the opinion of the Deputy Legal Advisor (Land building department) was finally received at the office of the Land Acquisition Collector on 23.7.2010. The land Acquisition Collector after receiving the opinion directed the Naib Tehsildar (L.A) to process the file and get the appeal filed within the time after completing the necessary formalities. The calculation of the appealable amount was verified and after rechecking it was found in order. The file after preparation of the record was sent to the government advocate on 26.11.2010 who prepared the draft appeal on the same day and the sent appeal to the

appellant for verification and approval.

That it is submitted , in the mean time , in order to save further delay in the limitation draft appeal was prepared and finalization filed on 25.01.2011. it is also submitted that the appeal could not be filed within the period of limitation and there is a delay of 367 days in filing the appeal ."

3. In support of this application Mr. Sanjay Poddar, learned counsel of the appellant-UOI pleaded reliance on some judgments of the Supreme Court. Those judgments are reported as

"2010 (6) SCC 786: Improvement Trust, Ludhiana Versus Ujagar Singh & Ors , 2008 (14) SCC 589: Steel Authority of India Limited & Other Versus State of West Bengal & Others, 2008 (14) SCC 582: State (NCT of Delhi)) Ahmed Jaan , 2005(3) 752 : State of Nagaland Versus Lipok Ao & Others ,2005(3) SCC 761 Harishanker Rastogi Versus Sham Manohar & Others, 2002(3)SCC 195 :Ram Nath Sao Versus Gobardhan Sao & Others, 1988(2) SCC 142: G.Ramegowda Major & Others Versus Land Acquisition Officer, 1998 (7) SCC123: N.Balakrishnan Versus M. Krishnamurthy and 1988(2) SCC 142: G. Ramegowda Major & Others Versus Land Acquisition Officer." Mr. Poddar cited some judgments of this court also wherein delay in filing of appeals by the government in the land acquisition matter was condoned. Those judgment are reported as "2010(2)AD (Delhi) 750: Vijay Kumar Versus Union of India, 2010(168)DLT 731:UOI Versus Mahender Singh, 2010(171)DLT622: Raghbir Singh Versus UOI, 2010(3) AD Delhi 771: Rajpal Singh Versus UOI, 2010(4) AD Delhi 556: Sita Rani Versus UOI, 2009 (165) DLT

290:Om Prakash, 2008 (149) 249: DDA Versus Vijay Pal Singh, 2007(141) DLT 484: Delhi Development Authority Versus Saraswati Devi , 2007(10) AD (Delhi) 42: DDA Versus R.S Jindal , 2007 (143) DLT 426: Rati Ram Versus UOI, 2005(117)DLT 1: Yad Ram Versus UOI, 120 (2005)DLT348(DB):Kanwar Singh Versus UOI,2002(8) AD(Delhi): Shiv Dan Singh Versus UOI,1999(79)DLT 572: UOI Versus Darshan Singh and 1990 (42) DLT 577 :UOI Versus Jyotsna Holdings Pvt. Ltd."

4. Before proceeding further, I may mention here that the land owner did not enter appearance despite service of notice on him of this application of the Government for condonation of delay in the filing of its appeal.

5. I have gone through all the judgments cited by Mr. Sanjay Poddar. The crux of all these judgments of the Supreme Court as well as this Court is that the fact that it is the Government which is seeking condonation of delay and not a private party is totally irrelevant factor when the Courts are disposing of such like applications for condonation of delay. The law of limitation is the same for a private citizen as well as for Government authorities. It has been held that where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay then the delay should generally be condoned. In the present case, the appellant itself has averred in the application that the Land Acquisition Collector had received the file from the legal department of the Government with the approval to file an appeal against the judgment of the trial Court in August, 2010 and thereafter the Naib Tehsildar was directed to get the appeal filed within time. The appeal was, however, filed on 25th January, 2011 and there is no explanation whatsoever for the inaction during the period from August, 2010 to 25th January, 2011. In the absence of any explanation in that regard, it cannot be said that there was a sufficient cause for the appellant for not preferring the appeal within the period of limitation and that makes it a clear case of gross negligence and, therefore, the delay in filing of the present appeal cannot be condoned just for the reason that Courts have been holding that applications

for condonation of delay should be dealt with liberally, as was the contention of the learned counsel for the appellant.

6. This application is accordingly dismissed and as a result of the dismissal of the appellant's application for condonation of delay, this appeal is also dismissed as time barred.

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