(1991) 03 AHC CK 0061

Allahabad High Court

Case No: First Appeal No''s. 710 to 713 of 1989

State of U.P.		APPELLANT
	Vs	
Phota		RESPONDENT

Date of Decision: March 7, 1991

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 96
- Land Acquisition Act, 1894 - Section 18, 54
- Limitation Act, 1963 - Section 5

Citation: AIR 1991 All 229 : (1991) RD 225

Hon'ble Judges: N.N. Mithal, J; G.K. Mathur, J

Bench: Division Bench

Advocate: R.N. Bhalla, R.K. Kakar and K.B.L. Gaur, S.C., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N. N. Mithal, J.
These four appeals have been filed by the State of U.P. u/S. 54 of the Land Acquisition Act read with S. 96, C.P.C.

2. All these appeals are against a common judgment of the court below by which four references u/S. 18, Land Acquisition Act, which had been consolidated, were disposed of raising the compensation for the acquired land to Rs. 30/- per sq. yard.

3. The appeals were filed beyond the period of limitation along with requisite application u/ S. 5 Limitation Act seeking condonation of delay. All these appeals are beyond time by more than 240 days. These are not the solitary cases where an appeal by the State Government has been filed with such long delay. In fact, if the experience we have had in this regard lately is any index, it would be an exception if an appeal is filed by the State within limitation for, as a rule, most of the appeals are

accompanied by applications u/S. 5. So is the case with many of the public or local bodies.

4. The affidavits that have been filed to support the delay condonation application merely recount a series of facts as to what lead to the delay due to time spent at various stages by the agencies involved and their multi-level authorities in an attempt to explain this delay. The respondent vehemently opposes on the ground that the affidavits fail to disclose any cause for delay and whatever is recited as cause of delay was neither justified nor properly supported by relevant documentary evidence.

5. Merits of the case later. First we will try to examine as to on what considerations should the court decide an application u/S. 5 Limitation Act. The law had been quite severe and stringent some time ago and the established view was that the delay must be explained day by day. The view taken by this Court in Sohan Vs. Abdul Hameed Khan, was that not only should the applicant show sufficient cause for the delay but must also explain the whole period of delay, day by day. In 1981 All LJ 176 the same view was reiterated that each day''s delay must be explained.

6. There has been another line of decisions whereunder the words ''sufficient cause'' were to receive liberal construction so as to advance substantial justice. See Lalta Prasad Singh Vs. Deputy Director of Consolidation, Mirzapur and Others, .

7. In many cases question raised has been whether State should receive any special treatment in such matters or it should be treated alike with a private person. In AIR 1977 HP 3 a Division Bench of that Court speaking through R. S. Pathak J, (as he then was) observed:

"State has to be regarded as an ordinary litigant and whatever is not considered as sufficient ground for a private person cannot be considered a sufficient ground for the State.

There can be no question of showing any latitude in favour of the State, subject to any special difficulty arising which may disable the counsel from filing it. Some allowance has to be given to the fact that such appeals have to pass through a variety of officers."

8. Somewhat similar observations have been made in two recent decisions of- the Supreme Court, which in fact forms the sheet anchor of the submission made by the Standing Counsel. The two cases are: Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, and G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, , which we propose to consider in detail.

9. Observations of Thakkar, J. in the first case to the extent relevant are:

"Principles of equity before law demands that litigants including the State as a litigant, are accorded the same treatment and the law is administered in an

even-handed manner. There is no warrant for according stepmotherly treatment when State is the applicant praying for condonation of delay."

10. The Court then culled out certain principles on which the cause of delay should be approached. The Supreme Court articulated the points thus Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, at p. 1354):

1. Ordinarily 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.

11. We consider it relevant to mention here that the report of this case does not throw much light on the facts of the case except that the delay involved was only of a few days. We, therefore, do not have the advantage of facts of that case and the situation the court was faced with.

12. It is no doubt true that a litigant does not gain anything by late filing of the appeal as it may put the very appeal in jeopardy. But does it mean that whatever be the extent of delay, the party must get benefit of S. 5? This, in our opinion, is not true intent of these observations. The Supreme Court, we think, only intended to say that Court should not assume that the delay was designed or deliberate but it ought to patiently consider what the party has to say. If it makes out a good and sufficient reason for the delay, the application should ordinarily be allowed.

13. There can be no two opinion on the point that as between rejection of an appeal for delay and condoning it, it is desirable to ,lean in favour of the latter. This however cannot be an inviolable rule. If the two aspects are equally balanced the Court should certainly favour hearing rather than deny hearing on account of delay. This again is merely a rule of caution and does not lay down in absolute terms that

in every case hearing should be preferred irrespective of the extent of delay or its cause. These two aspects cannot be ignored totally and certain judicial balance in this matter is called for.

14. On the third point also the Supreme Court did not intend to lay down anything in absolute terms. Explaining each days delay certainly may not mean every hours delay but when an explanation for any delay is offered it ought to be examined in pro per perspective. If the applicants allege that the sanction of the Govt. was received after, say, two months then this statement offers no explanation at all unless it is further pointed out that either due to heavy work or due to any other particular reason the matter could not be dealt with earlier. The explanation which is given must be reasonable and should be supported by evidence, as in the illustration by the affidavit of the concerned authority who should give out the reasons and circumstances why sanction could not be given earlier.

15. The aid of forth and firth points also have been sought. On principle there can be no two opinions but when made applicable in a given case it is only when the delay is non-deliberate that this principle can apply. It will always be difficult to establish deliberate ''delay'' and the term here only means absence of negligence or gross-inaction. If the party has taken the matter casually even when the limitation is shortly to expire or even thereafter such act would certainly amount to deliberate delay.

16. The law of limitation is intended to provide some sort of discipline in proceedings before the Court. The very fact that this law prescribes certain fixed period for doing certain things itself means that the legislative intention is to enforce discipline in Court affairs which cannot be left to the personal whims of a person or to his convenience. Certain discipline is therefore, inherent in every concept of the law of limitation and this can offer no ground for grudge to any one, much less, the State. If State actions are weighted by cumbersome bureaucratic procedures, the private individual also may suffer from paucity of hands and funds. If law expects a person to leave his business, cultivation or service alone in order to approach the Courts in time, why cannot the State, with its large work force and immense resources, cannot be expected to do so? All that is required is a properly coordinated action. If sufficient time-bound guidelines are laid down this work can be accomplished within time. The problem only is that more the Courts become liberal the more the Government become complacent. This must stop and the Courts will have to take notice of this casualness which is creeping into the functioning of the Government, particularly in the law Department. It is a matter of regret that those who must know the law should seem to be so ignorant about its rigours and requirements. The Government should now wake up soon and devise some methodology to see that papers for appeals are processed quickly and vigorously at all stages and scope for delay minimised to the bare minimum.

17. In the second case the Supreme Court . observed as under:--

"The law of limitation is, no doubt, the same for a private citizen as for Governmental authorities. Government, like any other litigant must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it. Therefore, in assessing what, in a particular case, constitutes ''sufficient cause'' for purposes of S. 5 it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of functioning of the Government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural-red-tape in the process of their making. A certain amount of latitude is, therefore, not impermissible."

18. What follows from these decisions therefore, is, (i) the cause shown should be construed liberally, (ii) the party seeking. condonation must not have been negligent or guilty of deliberate or gross inaction and that (iii) not all mistakes attributed to a counsel can afford a valid cause for condonation and absence of negligence, mala fides and inaction on the part of the counsel should be shown.

19. A conscious distinction between an appeal filed by a private individual and the one by the State was, however, made in G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, in the following terms:

"One factor which distinguishes the case of the State from others if appeals by the State are lost for such default, no person is hurt personally but the larger public interest suffers ultimately. Since the decision of the Government are collective and is institutional thus are distinguishable from those which are taken by a private individual."

20. In spite of the distinction as above the Court still maintained that the law of limitation is the same, for a private citizen as for governmental authority and the Government like any other litigant must take responsibility for acts and omissions of its official.

21. The facts of that case were however very different and peculiar as serious allegations of acts of fraud and bad faith on the part of its officers and agents and that they were clearly at cross purpose with that of the State had been made and successfully so. It was for these special reasons that the court condoned the delay. In passing it was also observed that the Governmental decisions are proverbially slow encumbered, as they are by a considerable degree of procedural red-tape in the process of their making. A certain amount of latitude is, therefore, not impermissible.

22. We may also refer here to Smt. Sandhya Rani Sarkar Vs. Smt. Sudha Rani Debi and Others, holding that it was for the party seeking condonation to satisfy the

court that he had sufficient cause for not preferring the appeal within time and this explanation must cover the whole period of delay. The court refused to lay down precisely as to what facts and material would constitute "sufficient cause" but held that the expression must receive a liberal construction in order to advance the cause of substantial justice. This however, was hedged by the condition that there should be no negligence or inaction or want of bona fide imputable to the party.

23. Thus the precise legal position as it emerges from these decisions can be stated as under :

(i) State and the private individual both stand on the same footing and should be treated alike. In the case of the State however, while construing the cause shown the court should be alive to the impersonal nature of State machinery loaded as it is with inherited bureaucratic methodology inspired with note-making, file-pushing, and passing on the buck ethos. Thus some delay may be inevitable and this should receive a more liberal consideration and is not to be viewed in a pedantic manner.

(ii) Approach in considering the cause shown should be such which would advance the cause of substantial justice rather than throttle it.

(iii) The party which seeks condonation must also bear the burden of showing that despite all necessary steps being taken to file the appeal within time it failed due to cause beyond its control. There must be absence of negligence or inaction and also no lack of bona fide, should be attributable to it.

(iv) Only on crossing these hurdles can an application for condonation succeed. However, each case deserves to be decided on its own facts and circumstances and no strait jacket formula can be prescribed.

24. Having concluded on what should be the approach in considering an application u/S. 5, we must now proceed to examine the facts facing us in these appeals which are almost similar.

25. In First Appeal No. 710/ 89 the judgment of the trial court was pronounced on 4-11-1988 whereafter an application for certified copy thereof was made on 12-12-1988 which was ready on 16-12-1988 and was delivered on 19-12-1988. When appeal was filed in the High Court the Stamp Reporter reported the appeal was within time up to 7-2-1989 and was beyond time by 283 days as on the date of reporting i.e. 17-11-1989.

26. The appeal was actually presented in court on 20-11-1989 along with an application u/S. 5 Limitation Act. The court was not satisfied with the explanation initially given by the appellant in the supporting affidavit as several periods of time had remained unexplained. Subsequently supplementary affidavits were also filed. The application was opposed and the parties have already exchanged their affidavits and have had full opportunity of filing supplementaries also and for presenting their respective cases.

27. The facts as these emerge from the various affidavits show that the certified copy of the judgment was sent by D.G.C. to the Collector and these papers were then forwarded to the State Government for sanction to file the appeal. It is significant to note that neither the date when the District Government Counsel sent the papers were actually forwarded to the State Government have been mentioned in the affidavits. The sanction granted on 15-2-1989 was received by Collector on 27-2-1989. Only thereafter the Land Acquisition Officer wrote to the Railway Authorities, for whose benefit the land had been acquired, for sending expenses for filing the appeal. In the meantime, on receipt of a copy of the sanction, the Standing Counsel also sent a telegram to the Collector on 2-3-1989 for sending some one with expenses. On 20-3-1989 a reminder was sent to the Railways in response to it Railway authority requested for a copy of the judgment. The copy was sent to the Railways on 11-4-1989 and after repeated reminders on 11-5-1989, 15-5-89, 29-6-89, 7-7-89 and 20-9-89 at long last the railway authorities sent a cheque on 11-10-1989 for expenses. The cheque had first to be encashed and on 3-11-1989 bank draft was prepared. Third Nov. 1989 being a Friday an official from Land Acquisition Office proceeded to Allahabad on 6-11-89. It is difficult for us to understand the purpose behind this assertion. For all that we know it is easier to contact the Standing Counsel on Saturday or Sunday for drafting appeals as there is no court work on these days. Be that as it may, the deponent proceeds to say that on arrival at Allahabad on 7-11-1989 the appeal was dictated by the Standing Counsel on 8-11-1989 and was subsequently filed on 17-11-1989.

28. All the facts are narrated in the affidavits are not correct as will be clear from the statement given below based on the record of these appeals before us :

1. Appeal No.	710/89	711/89	712/89	713/89
2. D/o judgment.	4-11-88	4-11-88	4-11-88	4-11-88
3. Cert. copy :				
(i) Applied on.	12-12-88	12-12-88	21-11-88	3-3-89
(ii) Ready on.	16-12-88	16-12-88	4-1-89	10-3-89
(iii) Delivery.	19-12-88	19-12-88	19-1-89	13-3-89

4. Appeal.				
(i) Limitation up to.	7-2-89	7-2-89	19-3-89	20-3-89
(ii) Reporting.	17-11-89	17-11-89	17-11-89	17-11-89
(iii) Filed on.	20-11-89	20-11-89	20-11-89	20-11-89
(iv) Delay.	283 + 3 days.	283 + 3 days.	243 + 3 days.	242 + 3 days.
5. Court-fee.				
(i) Payable.	15.445/-	29,845/-	22,907.50	25,000/-
(ii) Stamp	5,000/-	500/-	300.00	25,000/-
purchased on.	17-11-89 5000/-17-11-89 5,000/-17-11-89 445/-adhesive stamp.	25-10-89 1,000/- 7-11-89 25,000/- 3-11-89 345/- adhesive.	6-11-89 500.00 25-10-89 1,000 x 7 7-11-89 1,000 x 2 6-11-89 3,000.00 7-11-89 5000 x 2 7-11-89	3-11-89

29. From the facts given above one thing will be obvious that there is unexplained delay from the time copies were sent to Government and the date of giving the sanction and also from 27-2-1989 till 3-11-1989. The railway ought to have been

intimated about the result of the reference as soon as the D.G.C. (Civil) had sent his opinion to S.L.A.O. Why the Railway Authorities were informed only after the sanction from the Government had been obtained remains unexplained? This could have been done immediately on the receipt of the opinion from the District Government Counsel. For the delay in giving the sanction no material at all has been placed before us.

30. In the instant case a part of the delay has been caused on account of the railway on whose behalf also an affidavit has been filed by its Assistant Engineer, Ram Das. According to him when the papers were received from the Land Acquisition Officer the matter was referred by the Senior Civil Engineer, to the Dy. Chief Engineer (Construction) New Delhi for obtaining approval and sanction for expenses for filing the appeals. The Dy. Chief Engineer, forwarded the papers to the Chief Administrative Officer for obtaining the opinion of the Chief Standing Counsel for the Northern Railway at Allahabad. An official was sent to Allahabad on 20-3-1989 for obtaining legal opinion but since there were holidays he could meet the Standing Counsel only on 28-3-1989 and obtained his opinion and also an approximate idea of expenses involved. On receipt of that opinion the Senior Civil Engineer, Saharanpur wrote to the Deputy Chief Engineer, New Delhi on 4th of April, 1989 for sanction to file the appeal and for expenses, who in turns asked the Senior Civil Engineer to inquire from the Special Land Acquisition Officer to file the appeal at his own level as necessary money had already been deposited with the Special Land Acquisition Officer which had not been utilised. In response to the correspondence the Special Land Acquisition Officer informed the Railway administration on 1-5-89 to arrange the necessary expenses as the amount deposited by the railway administration had already been utilised for payment of compensation in other connected cases. Ultimately on 11-5-1989 the Deputy Chief Engineer (Construction) was requested to sanction the required amount for filing the appeal.

31. Once again objection was raised by the Chief Administrative Officer in his letter dated 1-6-1989 pointing out that the money had already been deposited at the initial stage which was much more than the amount required for the expenses and that amount could be utilised for filing the appeals. In response to this The Special Land Acquisition Officer sent the details of the utilisation of that amount and informed the Chief Ad-ministrative Officer that he had no balance left with him. It was thereafter that the Chief Administrative Officer referred the matter to the Accounts Department and after some exchange of correspondence sanctioned the amount on 2-8-1989. Again certain correspondence ensured for clearing departmental formalities and finally the money was deposited with the Special Land Acquisition Officer only on 7-10-1989 thereafter steps were taken to file the appeals.

32. Although it was not necessary for us to go into details about the various averments made in the affidavits but we have done so to show that how the

machinery of the Government and its various departments had been moving even in a matter where last date of filing the appeal had long passed. From these facts one thing is very clear that nobody in the department, whether in the office of the Special Land Acquisition Officer or the railway administration, was in the least bothered or concerned about expediting the matter and they were only hooked to departmental procedures and formalities. Every one seems to have taken the matter casually and at no stage did anyone show the least regard for the period of limitation as prescribed. What could this be called? Is it not negligence? Will it not be inaction? If not, what else could be called negligence and inaction? Even if we try to give the most liberal interpretation to the expression ''sufficient cause'' we still find ourselves unable to classify this attitude and actions as any thing other than negligence and inaction. Howsoever we may try to find even an iota of explanation for the delay, we fail to do so every time. At no point during this entire period, the railway administration or the Special Land Acquisition Officer display any anxiety on their part to expedite the procedure although each of them must be aware that the last date of limitation had expired long time ago. In fact the sanction itself had been received from the Government after the last date of limitation. This fact alone should have spurred the officers to take prompt and expeditious action in filing the appeal without much loss of time thereafter. We regret to say that this effort is not visible anywhere. As the Supreme Court has said that no negligence or inaction ought to be imputable to the party which seeks condonation of delay. We find in this case that at every stage the Government officials have been negligent and guilty of inaction and, therefore, in our opinion the State is not entitled to any relief in this matter.

33. There is another aspect to which also we may make a mention here. According to the appellant the expenses were made available to it though cheque on 11-10-89 which was encashed and bank draft prepared on 3-11-89, whereafter the pairokar reached Allahabad with in on-7-1989. If these facts be correct how does the State explain the purchase of court-fee stamps attached to the memo of appeal on dates prior to 7-11-1989? The first of these stamp is of Rs.500/-purchased on 25-10-1989, another for Rupees 25,000/- purchased on 3-11-1989, next on 6-11-1989 for Rs. 1000/- and the last on 7-11-1989 for Rs. 3,000/-. No explanation is forthcoming from the side of the State to explain this apparent anamoly in its stand. The only conclusion which one can reasonably draw is that the assertion that court-fee was available only on 3-11-1989 may not be entirely correct.

34. Similar is the position in other appeals also as would be apparent from the dates mentioned in the chart given (sic).

35. Lastly we may also point out that while the Pairokar had arrived on 7-11-1989 and the appeal had been dictated on 8-11-1989 there is no explanation for the delay of about nine days thereafter. The appeal was put up for office report by the Stamp Reporter on 17-11-1989 and was filed in Court only on 20-11-1989. There is no

explanation for this period also.

36. In the supplementary counter-affidavit a very specific plea had been taken that the copies of the correspondence in support of the facts alleged by the appellant for seeking condonation of delay have not been filed. There was also a specific plea that delay from 14-7-1989 to 7-10-1989 has not at all been explained. Despite these clear objections taken by the respondents no effort has been made by the State to come out with a plausible explanation for the delay during this period.

37. Since, in our view, appellant has been guilty of inaction and its conduct has been negligent we think the appellant has failed to prove any sufficient cause for delay in filing the appeal. We, therefore, find no merit in the application and it is accordingly rejected.

38. Application dismissed.