LAO Vs Jadala Anand and Others

CMP No. 22949 of 2002

Court: Andhra Pradesh High Court

Date of Decision: Jan. 31, 2003

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 22 Rule 10A, 152

Citation: (2003) 3 ALD 374

Hon'ble Judges: G. Yethirajulu, J; B.S.A. Swamy, J

Bench: Division Bench

Advocate: A.G, for the Appellant; Pulla Reddy, for the Respondent

Final Decision: Allowed

Judgement

B.S.A. Swamy, J.
CMP Nos. 22950, 22953 and 22956 have been filed to condone the delay, CMP Nos. 22951, 22954 and 22957

have been filed to set aside the abatement and CMP Nos. 22952, 22955 and 22958 have been filed to bring the legal representatives of the

deceased respondents on record.

2. By issuing notification u/s 4(1) of the Land Acquisition Act, an extent of Ac.3.29 guntas of land belonging to the respondents was acquired for

construction of RTC Bus Stand. Thereafter, the Land Acquisition Officer completed award enquiry on 27-5-1980 and fixed the compensation

payable to the land losers, at the rate of Rs. 35/- per square yard and deducted 1/3rd of the amount for development of the land. With the result, a

compensation of Rs. 23.22 Ps. per square yard was awarded. Aggrieved by the said award, the land losers sought for a reference u/s 18 of the

Land Acquisition Act and the learned Senior Civil Judge, Nalgonda, by his award dated 10th December, 1982 enhanced the compensation at the

rate of Rs. 85/- per square yard and no amount was deducted for development. Aggrieved by the said award and decree, the Land Acquisition

Officer preferred A.S.No. 748 of 1983 on the file of this Court.

3. We understand that Respondent Nos. 2, 3 and 4 died during the years 1992-1993 while the appeals were pending. It is also now on record

that the Land Acquisition Officer addressed a letter to the learned Government Pleader for Land Acquisition, informing the death of these

respondents and to take steps to bring their legal representatives and that letter was received in the Government Pleader''s Office on 22.01.1993.

But the Government Pleader''s Office did not take any steps to bring the legal representatives on record. It is also necessary to mention that at that

point of time one Mr. Rajeev Indhani, Advocate was appearing for the land losers. When the appeal came up for hearing, the appeal was disposed

of on 7th August, 1996 without knowing that respondents died and compensation was reduced to Rs. 35/- per square yard. Nearly after one year,

some of the living respondents filed an application to set aside the judgment and decree by stating that the appeal was disposed of exparte since

Mr. Rajeev Indhani, who suffered disqualification from appearing in the Court, did not appear in the Court on that day and the appeal was decided

in his absence. This Court by an order dated 31.12.1997 having observed that the appeal was disposed of in the absence of Mr. Rajeev Indhani

and also having taken note of the fact that R2, R3 and R4 died during the pendency of the appeal, set aside the judgment and decree dated

7.8.1996 on condition that the land losers pays an amount of Rs. 3,000/- to Ms. Swarna Reddy, the Counsel for the Government towards costs

within three weeks from that date. Their Lordships further directed that on payment of the cost, the appeal shall be restored to the file for hearing

before regular Court hearing the first appeals. Thereafter, we understand that the said amount was paid and the appeal was restored to file. Nearly

five years thereafter, the appeal was posted before this Court on 14.11.2002 and having noticed that in spite of the orders of the Court, the legal

representatives of R2, R3 and R4 were not brought on record, we adjourned the matter by giving two weeks time. Thereafter, the present

applications were filed.

4. The Counsel for the respondents filed counters contending that there is an abnormal delay of about 15 years in filing these applications and the

learned Advocate General did not explain the delay properly, if not, on day-to-day basis. Hence, the applications have to be dismissed.

5. Countering the arguments of the respondents Counsel Mr. A. Pulla Reddy, the learned Advocate General contended that under Order 22 Rule

10-A of CPC a duty is cast on the Counsel appearing for the respondents to inform the Court about the death of the party and thereafter the Court

shall thereon direct the other party so as to enable him to take steps to bring the legal representatives of the respondents on record. As such the

Counsel for the respondents did not adopt that course, the appellants cannot be found fault in filing these applications with abnormal delay. The

learned Advocate General also contended that a fraud has been played by the respondents in filing an affidavit stating that Mr. Rajeev Indhani was

disqualified from appearing in the Court for getting the order of this Court set aside, but on verification of the records it is found Mr. Rajeev

Indhani did not incur such a disqualification at that point of time.

6. Be that as it may, we have gone through the order passed by the Division Bench on 31.12.1997. Their Lordships did not set aside the judgment

and decree in appeal on the ground that Mr. Rajeev Indhani suffered disqualification. Their Lordships simply stated that the case was disposed of

in the absence of Mr. Rajeev Indhani. Hence, we need not go into that question since their Lordships categorically recorded a finding that the

appeal was allowed in the absence of Mr. Rajeev Indhani and the fact that whether Mr. Rajeev Indhani incurred disqualification or not did not vie

with their Lordships. Accordingly, we do not find any substance in the argument of the learned Advocate-General on this contention.

7. Coming to the service of notice about the death of the respondents by the Counsel for the respondents, it is true that under Order 22, Rule 10-

A of CPC an obligation is cast on the Counsel for the respondents to file a memo in the Court bringing to the notice of the Court about the death of

the party and the legal heirs that survived him, so that the other party can take steps to bring them on record. But this practice was not followed by

any of the advocates. They are simply serving a letter on the other side and the other side was taking steps to bring the legal representatives on

record.

8. Be that as it may, the Counsel for the respondents contends that perhaps the Counsel appearing for the respondents might have served a letter

on the Government Pleader bringing to his notice about the death of R2, R3 and R4 and thereafter only Land Acquisition Officer might have

collected the names of the legal advisors and informed the Government Pleader to take steps to bring the legal representatives. But we cannot give

credence to the argument of both the Counsel in the absence of any evidence to show that a notice was served on the Government Pleader or the

notice was not served on the Government Pleader. Without going into that dispute, the fact remains as on today that the order passed in the appeal

was set aside and the appeal was restored to file. Even after some of the respondents died still the appeal is pending with regard to the other

respondents. Since valuable rights of the parties are involved, more so, when the Civil Court has enhanced the compensation from Rs. 22-22 Ps.

to Rs. 85/-per square yard, which was reduced by this Court in the judgment that was set aside to Rs. 35/-, we have to decide the issue on merits,

without being obsessed that the Government, failed to bring the legal representatives on record. Since the appeal is still subsisting, we are inclined

to condone the delay in filing these applications in the interest of justice and fair play and also to give an opportunity to both the parties to put-forth

their contentions in deciding the appeal on merits. Hence, we are inclined to condone the delay in filing these applications both for setting aside the

abatement as well as to bring the legal representatives on record but not without awarding costs. Since the delay is so abnormal and as many as

three respondents died, we feel that the ends of justice will be met by directing the Government to pay Rs. 15,000/- as costs to the Counsel for the

respondents for condonation of the delay in filing these applications and when once the delay is condoned, the application to set aside the

abatement and to bring the legal representatives on record have to be necessarily allowed.

9. The Government is given time till 20-2-2003, to pay the costs.

10. We are supported in our view by a Judgment of the Supreme Court reported in State of Kerala Vs. Sridevi and Others, . Their Lordships of

the Supreme Court while considering an application filed under Order 1, Rule 10 CPC to bring the legal representatives of the deceased belatedly,

held that when public interest is involved a bilateral attitude in the matter can be adopted. Since the case involves payment of public money as

compensation, keeping the factual background of the case in mind, we are constrained to allow these applications.