

G. Ramegowda, Major, Etc vs Special Land Acquisition Officer, ... on 10 March, 1988

Equivalent citations: 1988 AIR 897, 1988 SCR (3) 198, AIR 1988 SUPREME COURT 897, (1988) 1 KANT LJ 524, (1988) 1 APLJ 29, (1989) 2 MAD LJ 14, (1988) 1 JT 524 (SC), (1989) 1 MAD LW 580, 1988 (2) SCC 142

PETITIONER:

G. RAMEGOWDA, MAJOR, ETC.

Vs.

RESPONDENT:

SPECIAL LAND ACQUISITION OFFICER, BANGALORE.

DATE OF JUDGMENT 10/03/1988

BENCH:

VENKATACHALLIAH, M.N. (J)

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VENKATACHALLIAH, M.N. (J)

NATRAJAN, S. (J)

CITATION:

1988 AIR 897	1988 SCR (3) 198
1988 SCC (2) 142	JT 1988 (1) 524
1988 SCALE (1) 479	

ACT:

Limitation Act, 1963 : Section 5-Appeals filed by Government- Condonation of delay- 'Sufficient cause' - Expression to receive liberal construction so as to advance substantial justice-Lapse on part of Government Pleader- How far a 'sufficient cause'.

Constitution of India, 1950: Article 136 -Appeal to Supreme Court against order of High Court condoning delay in filing appeal-High Court meanwhile disposing the main appeal on merit-Does not bar Supreme Court of consideration of correctness of High Court order condoning delay.

HEADNOTE:

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The lands of the appellants were acquired for the purpose of the 'University of Agricultural Sciences' at Bangalore.

The Civil Judge in Land Acquisition References under Section 18 of the Land Acquisition Act passed a common award

in the three Land Acquisition References on 17.7.1970. Application for certified copies was made on 31.8.1971. Copies were obtained on 5.1.1972 and appeals were lodged in the High Court on 19.1.1972 in one appeal and on 10.4.1972 in the two other appeals. There was substantial delay in preferring the three appeals.

The Government in support of its prayer for condonation of delay narrated the chronological sequence of events and the protracted correspondence between the Government-Pleader and the Government, and the difficulties faced by the administration in even ascertaining the correct state of affairs owing to the negative and evasive attitude of the Government Pleaders.

In its appeals the State contended that both the Land Acquisition officer and the Civil Judge had steeply enhanced the compensation for the lands of the appellants. The lands that had been purchased by the claimant in the year 1962 for a sum of Rs. 7,000 per acre, were acquired pursuant to the notification dated 2.3.1963, that the Award of the Land

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Acquisition Officer granting Rs.58,000 per acre was unduly generous for the acquisition was just about a year after the purchase. and that the further enhancement by the Civil Court to Rs. 1,45,200 per acre. clearly suffered from the vice of extreme excessiveness.

The High Court noticed that the Government Pleader who was in office till 15.12.1970 had applied for certified copies on 20.7.1970, but the application was allowed to be dismissed for default and that in one case he appeared to have taken away the certified copy even after he had ceased to be a Government Pleader. After consideration of the matter the Division Bench of the High Court condoned the delay in the filing in the appeals.

In the appeals to this Court by the appellants-claimants it was contended that the High Court fell into a manifest error in condoning the inordinate and wholly unjustified delay and that the explanation offered before and accepted by the High Court cannot. in law. be held to constitute 'sufficient cause' for purposes and within the meaning of. Section 5 of the Limitation Act. 1963. The State contested the appeals. by contending that the High Court had heard and disposed of the appeals before it on the merits. substantially reducing the compensation and that the appellants had already preferred Special leave Petitions against the final order as such, and that the appeals against the mere condonation of delay do not survive at all and must be held to have become infructuous. It was further contended that the Government Pleader whom the Government had necessarily to and did trust had let down that trust, and there was therefore sufficient ground for the condonation of the delay so as to promote public interest and do substantial justice.

Declining to interfere with the High Court's order and

dismissing the Appeals,

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HELD: 1. The fact that the main appeals are themselves, in the meanwhile, disposed of finally on the merits by the High Court would not by itself detract from and bar the consideration of the correctness of the order condoning the delays. This is an instance of what are called "dependent orders". If the order excusing the delay is itself set aside in these appeals, the further exercise, made in the meanwhile, by the High Court finally disposing of the appeals, would be rendered nugatory. [203H; 204A-B]

2. There is no general principle saving the party from all mistakes of its counsel. [205F]

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3. Each case will have to be considered-on the particularities of its own special facts. [205G]

4. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. [205F-G]

5. The expression 'sufficient cause' in Section 5 of the Limitation Act, 1963 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay. [205G-H]

6(i) The law of limitation is, no doubt, the same for 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. [206D-E]

(ii) If appeals brought by Government are lost for such default, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. [206C]

7(i). In assessing what, in a particular case, constitutes 'sufficient cause'. for purpose of Section 5 it might, perhaps be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, factors which are peculiar to and characteristic of the functioning of the Government. Implicit in the very nature of Governmental functioning is procedural delay incidental to the decision making process. [206E-H]

(ii) Due recognition of these limitations on Government functioning-within a reasonable limit-is necessary. It would be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. [206G]

8. In the opinion of the High Court, the conduct of the

law officers of the Government placed the Government in a predicament and that it was one of those cases where the malafides of the officers should

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not be imputed to Government. It relied upon and trusted its law officers. It took quite some time for the Government to realise that the law officers failed that trust. [206H; 207A,C]

9. The criticism that the delay on the part of the Government even after 20.1.1971 for over one year cannot be said to be either bonafide or compelled by reasons beyond its control is not without substance. Government could and ought to have moved with greater diligence and dispatch consistent with the urgency of the situation. The conduct of the Government was perilously close to such inaction as might, perhaps have justified rejection of its prayer for condonation. But in the interest of keeping the stream of justice pure and clean the awards under appeal should not be permitted to assume finality without an examination of their merits. [207D-F]

Shakuntala Devi Jain v. Kuntal Kumari, [1969] 1 SCR 106; Concord of India Insurance Co. Ltd. v. Nirmala Devi & Ors., [1979] 3 SCR 694; Lala Mata Din v. A. Narayanan, [1970] 2 SCR 90; Collector, Land Acquisition v. Katiji, [1987] 2 SCC 107; National Bank of Wales Ltd., [1899] 2 L.R.629 at 673 and Special Land Acquisition Officer v. B.M. Krishnamurthy, [1985] 1 SCC 469, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION Civil Appeal Nos. 856 and 857 of 1974 Etc. From the Judgment and order dated 13/14.6.1973 of the Mysore High Court in Misc. First Appeal Nos 290 and 293 of R.B. Datar and Ravi P Wadhvani for the Appellants. M. Veerappa for the Respondent.

The Judgment of the Court was delivered by VENKATACHALIAH, J. These three appeals, by the claimant-respondents in certain Land Acquisition Appeals before the High Court, are preferred, by Special Leave, against the common order dated 14.6 1973 of the High Court of Mysore (Karnataka) condoning, under Section 5 of the Limitation Act, 1963, certain delays on the part of the Land Acquisition officer in preferring the three corresponding appeals in M.F.A. No. 290 of 1973, M.F.A. 293 of 1973 and M.F.A. No. 289 of 1973 respectively The appeals before the High Court were directed against the common-award made by the Civil Judge, Bangalore District, in certain Land Acquisition References under Section 18 of the Land Acquisition Act steeply enhancing the compensation for the lands of the appellants acquired for the purpose of the University of Agricultural Sciences' at Bangalore. The circumstances leading upto and necessitating the prayer for the condonation of the delays before the High Court seem somewhat unfortunate, casting, as they do, as persions on the probity and rectitude of the conduct and good faith of the Government Counsel entrusted with the conduct of land acquisition cases.

2. The common award, in the three land acquisition references was passed by the learned Civil Judge on 17.7.1970. Application for certified copies was made on 31.8.1971; copies obtained on 5.1.1972 and M.F.A. No. 289 of 1973 was lodged before the High Court on 19.1.1972 and the other two appeals viz., M.F.A. 290 of 1973 and 293 of 1973 on 10.4.1972. There were, thus, substantial delays in preferring the appeals.

The Land Acquisition officer, appellant before the High Court, filed applications to have these delays excused. The Division-Bench of the High Court was persuaded to make an order condoning the delay.

The grievance of the State in the appeals was that the lands which had been purchased in the year 1962 for a sum of Rs.7,000 per acre, were acquired pursuant to the preliminary notification dated 2.3.1963 and the award of the Land Acquisition officer granting Rs.58,000 per acre was itself unduly generous having regard to the fact that the acquisition was just about an year after the purchase by the claimants and that the further enhancement by the Civil Court to Rs.1,45,200 per acre clearly suffered from the vice of extreme excessiveness

3. Sri. R.B. Datar, learned counsel appearing in support of these appeals assailed the order of the High Court on the ground that the High Court fell into a manifest error in condoning these inordinate and wholly unjustified delays and that explanation offered before, and accepted by, the High Court sarnat, in law, be held to constitute 'sufficient cause' for purposes and within the meaning of, Section 5. Learned Counsel strenuously urged that the rights vesting in the successful parties to a litigation by the expiry of the period of limitation should not lightly be interfered with unless it was established that the appeal could not have been lodged in time despite the exercise of reasonable diligence on the part of the appellant. Learned counsel further contended that the fact that the Government Pleaders had not discharged their duty to the Government, even if true, would be wholly beside the point as that would be a matter of internal administration. If Government was not able to set its own house in order, says learned counsel, the opposite party, who had the benefit of the adjudication should not be exposed to a time barred appeal. There cannot, says counsel, be one standard for an ordinary litigant and another for Government.

On the merits of the cause shown, learned counsel said, the explanation served only to aggravate the negligence; that the explanation might, at best, amount to sufficient- cause for the delay upto 20.1.1971 when the Civil Judge wrote to the Government and the latter, admittedly, was put on notice of the award and decree passed in the cases and that the subsequent delays of over an year thereafter in preferring the appeals cannot, even on the most liberal construction of 'sufficient cause', be said to be justified.

4. Shri Veerappa, learned counsel for the State, on the other hand, while seeking to support the order under appeal submitted that the circumstances of the case disclosed that the Government was put in a predicament by its own law- officers and that where, as here, public interest had come to suffer owing to the bad-faith and divided loyalties on the part of the officers and advisers of Government, the technicalities of procedure should yield to considerations which would promote public interest and substantial justice. Shri Veerappa submitted that in the present case the

Government-Pleaders whom Government had necessarily to and did trust had let down that trust and this was a case of 'salt having lost its savour'.

Shri Veerappa submitted that, during the pendency of the present appeals, the High Court had heard and disposed of the appeals before it on the merits substantially reducing the compensation; that appellants have already preferred SLP Nos. 2319, 2320, 2493 of 1974 against that Judgment and that the present appeals, preferred as they are against the mere condonation of delay, do not survive at all and must be held to have become infructuous.

5. We might, perhaps, deal with the latter submission of Shri Veerappa first. The fact that the main appeals are themselves, in the meanwhile, disposed of finally on the merits by the High Court would not by itself detract from and bar the consideration of the correctness of the order condoning the delays. This is an instance of what are called 'dependant-orders' and if the order excusing the delays is itself set aside in these appeals, the further exercise, made in the mean while, by the High Court finally disposing of the appeals, would be rendered nugatory. The submission of Shri Veerappa is, therefore, insubstantial.

6. In support of its prayer before the High Court for condonation of the delays, Government narrated the chronological sequence of events and the some-what protracted correspondence between Government-Pleader and the Government and the difficulties faced by the administration in even ascertaining the correct state of affairs owing to the negative and evasive attitude of the Government-Pleaders. These events and correspondence are referred to and evaluated in paragraphs 5, 6 and 7 of the High Court's order. After a consideration of the matter, the High Court was persuaded to the view that in the circumstances of this case, it could not be said that the Government was negligent. High Court observed:

"Taking into account all the circumstances of the case, we hold that there was not such negligence or inaction on the part of the L.A.O., as to induce as not to exercise our discretion under Section 5 of the Limitation Act to condone the delay in presenting the appeal."

Adverting to the conduct of the Government-Pleader the High Court observed:

"But how could the L.A.O. anticipate that the Government Pleader or the Assistant Government Pleader would fail to do such elementary duties like applying for such certified copies, obtaining them and forwarding them to the Government with his opinion? To say the least, the conduct of the Government Pleader and / or, the Assistant Government Pleader appears to us to be extraordinary."

(emphasis supplied) Indeed in the counter-affidavits filed on behalf of the State Government in these appeals, the Land Acquisition officer avers:

"I beg to submit that due to the unusual conduct of the District Government Pleaders who were in office during a particular period Government had to face the problem of

delay in filing of appeals in hundreds of cases. The Government was not able to know the real state of affairs till the concerned Government Pleaders relinquished their office. In fact, for some time, there was utter confusion and it became practically impossible to find out as to which are the Land Acquisition cases which has been disposed of and in which appeals were not filed though appeals ought to have been filed .. It is humbly submitted that the case of the Government for condonation of delay was that on account of the fraud played by the concerned Government Pleaders delay in filing the appeals has occurred and more than a crore of rupees would be a loss to the Government on account of the said fraud played by the Government Pleaders. In fact, in innumerable cases the Hon'ble High Court has condoned the delay in filing of the appeals, taking into consideration the most unusual conduct of Government Pleaders which had landed the Government in difficulties. I beg to further submit that almost all the appeals which had been entertained by the Hon'ble High Court after condoning the delay, have been allowed on consideration of their merits

(emphasis supplied)

7. The contours of the area of discretion of the Courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See: *Ramlal, Motilal and Chhotelal v. Rewa Coalfield Ltd.*, [1962] 2 SCR 762; *Shakuntala Devi Jain v. Kuntal Kumari*, [1969] 1 SCR 1006; *Concord of India Insurance Co. Ltd. v. Nirmala Devi and ors.*, [1979] 3 SCR 694; *Lala Mata Din v. A. Narayanan*, [1970] 2 SCR 90 and *Collector, Land Acquisition v. Katiji*, [1987] 2 SCC 107 etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression 'sufficient cause' in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay. In *Katiji's* case, (*supra*), this Court said:

"When substantial justice and technical considerations are A 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."

"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."

8. In litigations to which Government is a party there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private

individuals.

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 Section 5 it might, perhaps, be some what unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the 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. It is rightly said that those who bear responsibility of Government must have 'a little play at the joints'. Due recognition of these limitations on Governmental functioning-of course, within a reasonable limits-is necessary if the judicial approach is not rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of Governmental functioning is procedural delay incidental to the decision making process. In the opinion of the High Court, the conduct of the law-officers of the Government placed the Government in a predicament and that it was one of these cases where the mala fides of the officers should not be imputed to Government. It relied upon and trusted its law- officers. Lindley, M.R., in the *Re: National Bank of Wales Ltd.*, 1899 J 2 L.R. 629 at 673 observed, though in a different context:

"Business cannot be carried on, upon principles of distrust. Men in responsible positions must be trusted by those above them, as well as by those below them, until there is reason to distrust them."

In the opinion of the High Court, it took quite sometime for the Government to realise that the law-officers failed that trust.

While a private person can take instant decision a "bureaucratic or democratic organ" it is said by a learned Judge "hesitates and debates, consults and considers, speaks through paper, moves horizontally and vertically till at last it gravitates towards a conclusion, unmindful of time and impersonally." Now at the end, should we interfere with the discretion exercised by the High Court? Shri Datar criticised that the delay on the part of Government even after 20.1.1971 for over an year cannot be said to be either bonafide or compelled by reasons beyond its control. This criticism is not without substance. Government could and ought to have moved with greater diligence and dispatch consistent with the urgency of the situation. The conduct of Government was perilously close to such inaction as might, perhaps, have justified rejection of its prayer for condonation. But as is implicit in the reasoning of the High Court, the unarticulated thought, perhaps was that in the interest of keeping the stream of justice pure and clean the awards under appeal should not be permitted to assume finality without an examination of their merits. The High Court noticed that the

Government pleader who was in office till 15.12.1970 had applied for certified copies on 20.7.1970, but the application was allowed to be dismissed for default. In one case, however, he appears to have taken away the certified copy even after he ceased to be a Government Pleader. In a similar context where delay had been condoned by the High Court, this Court declined to interfere and observed:

"Having regard to the entirety of the circumstances, the High Court thought that the State should not be penalised for the lapses of some of its officers and that in the particular circumstances there were sufficient grounds justifying the condonation of delay in filing the appeals. It was a matter for the discretion of the High Court. We are unable to say that the discretion was improperly exercised .."

(See C.A. No. 992/1971, 1127/1974 and SLP (C) 3450/1974 dated 22.1.1985) We think in the circumstances of this case, we should also decline to interfere. Appeals are dismissed, but without an order as to costs.

N.V.K.

Appeals dismissed.