



GAHC010027172017

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/2051/2017

UNION OF INDIA.
REP. BY THE GENERAL MANAGERCON, N.F. RAILWAY, MALIGAON,
GUWAHATI-781011.

VERSUS

SRI JATIN CHANDRA KALITA and 3 ORS.
S/O. LT. HARI CHARAN KALITA, VILL. TEZPUR, MOUZA RAMPUR, DIST.
KAMRUP ASSAM, PIN-781132.

2:SRI SURACHI BALA DUWARI

D/O. SAJU DUWARI
VILL. TEZPUR
MOUZA RAMPUR
DIST. KAMRUPASSAM. PIN-781132.

3:SRI NIRANJAN KALITA

S/O. LT. DINA NATH KALITA
VILL. TEZPUR
MOUZA RAMPUR
DIST. KAMRUPASSAM. PIN-781132.

4:THE COLLECTOR

KAMRUP
GUWAHATI

Advocate for the Petitioner : MS.N R RABHA

Advocate for the Respondent : MR G BORDOLOI



Linked Case : I.A.(Civil)/2100/2017

UNION OF INDIA
REPRESENTED BY THE GENERAL MANAGER CON
N.F. RAILWAY
MALIGAON
GUWAHATI-781011

VERSUS

BASANTA DAS @ HIRA and ANR

S/O LATE LAKHI RAM DAS
VILL. TEZPUR
MOUZA RAMPUR
DIST. KAMRUP ASSAM
PIN 781132

2:THE COLLECTOR

KAMRUP
GUWAHATI.

Advocate for : MRS.U CHAKRABORTY
Advocate for : MRS. M D CHOUDHURY appearing for BASANTA DAS @ HIRA
and ANR

Linked Case : I.A.(Civil)/2049/2017

UNION OF INDIA.
REP. BY THE GENERAL MANAGERCON
N.F. RAILWAY
MALIGAON
GUWAHATI-781011.

VERSUS

SRI DHARYYA DAS and 2 ORS.



S/O. LT. BAHHIM DAS
VILL. TEZPUR
MOUZA RAMPUR
DIST. KAMRUPASSAM.

2:SRI SATYEN DAS

S/O. LT. BAHHIM DAS
VILL. TEZPUR
MOUZA RAMPUR
DIST. KAMRUPASSAM.
3:THE COLLECTOR

KAMRUP
GUWAHATI.

Advocate for : MS.U CHAKRABORTY
Advocate for : appearing for SRI DHARYYA DAS and 2 ORS.

Linked Case : I.A.(Civil)/2043/2017

UNION OF INDIA.
REP. BY THE GENERAL MANAGERCON
N.F. RAILWAY
MALIGAON
GUWAHATI-781011.

VERSUS

SRI BASANTA DAS @ HIRA and 3 ORS.
S/O. LT. LAKHI RAM DAS
VILL. TEZPUR
MOUZA RAMPUR
DIST. KAMRUP ASSAM. PIN-781132.

2:SRI SARBESWAR DAS

S/O. LT. LAKHI RAM DAS
VILL. TEZPUR
MOUZA RAMPUR
DIST. KAMRUP ASSAM. PIN-781132.
3:SMTI. DWARIKA BALA HIRA

W/O. LT. LAKHI RAM HIRA
VILL. TEZPUR



MOUZA RAMPUR
DIST. KAMRUP ASSAM. PIN- 781132.
4:THE COLLECTOR

KAMRUP
GUWAHATI.

Advocate for : MS. U CHAKRABORTY
Advocate for : MRS. M D CHOUDHURY (R 1-3) appearing for SRI BASANTA DAS
@ HIRA and 3 ORS.

BEFORE

HON'BLE MR JUSTICE PRASANTA KUMAR DEKA

For the applicant : Mrs. U. Chakraborty
Special Senior Counsel,
N. F. Railways.

For the respondents : Mrs. M. D. Choudhury,
Advocate.
Mr. G. Bordoloi
Government Counsel.

Date of hearing/judgment : 17.12.2020

ORDER

Heard Mrs. U. Chakraborty, learned Special Senior Counsel for N. F. Railways, applicant. Also heard Mrs. M. D. Choudhury, the learned counsel for the private respondents and Mr. G. Bordoloi, the learned Government Counsel for the respondent No. 4.

2. The LA Appeals arose out of the Land Acquisition Case No. 29/88 and the award therein was put under challenge by the private respondents in Misc. Reference Case Nos. 59/99 to 84/99 (old), Misc. Reference Case No. 17/2014 to 17(XXV)/2014 (new) and the common judgment dated 08.09.2014 was passed by the learned District Judge, Kamrup at Amingaon. The subject matter in the said land acquisition case was the land wherein the requiring department was the N. F. Railways, the present applicant.

3. In the said reference cases [59/99 to 84/99 (old) disposed of on 31.03.2003], the

present applicant Railways was not made party and being aggrieved the applicant Railways filed LA Appeal Nos. 1/12 to 31/12 in this Court. The said appeals were disposed of on 26.06.2013 holding that the appellant Railways being the requiring department, for whose purpose the land was acquired, they are person interested within the meaning of Section 20 of the Land Acquisition Act, 1894 and as such entitled to the notice from the Reference Court while deciding the aforesaid reference cases which admittedly were not issued. Accordingly this court in the said LA Appeal Nos. 1/12 to 31/12 set aside the judgment dated 31.03.2003 passed by the Reference Court and the same were remitted to the learned Reference Court (court of District Judge, Kamrup at Amingaon) for giving a fresh decision in the matter. While disposing of the said appeals, this Court directed the parties to the said appeals including the present applicant Railways and the Collector to appear before the Reference Court on 18.07.2013. Further the learned Reference Court was directed to decide the proceedings within a period of three months from the date of order of appearance of the parties as fixed by the appellate court.

4. After the said remand, the learned Reference Court passed the impugned judgment and order dated 08.09.2014. The present appellant Railways being aggrieved challenged the said judgment and order dated 08.09.2014 in the present appeals. In the process of filing the appeals there was delay of 555 days. Along with the said appeals these interlocutory applications were filed under Section 5 of the Limitation Act, 1963 for condonation of the said delay of 555 days. In the delay condonation applications in order to explain the causes for the delay it is pleaded that as per the direction of this court in LA. Appeal Nos. 1/12 to 31/12, the court notice/notices were issued to the Collector, Kamrup by the learned Reference Court and on the other hand, due to non appearance of the present appellant/applicant, the matter proceeded ex-parte. However, the said Reference Court did not issue notice to the applicant though there was an observation made by the appellate Court while disposing of the LA Appeal Nos. 1/12 to 31/12 that the Railways being the requiring department is a necessary party in the said reference cases.

5. The Railways came to know of the judgment and order of the learned Reference Court after the remand only on the basis of the letter dated 12.06.2015 issued by the

Additional Deputy Commissioner, Kamrup, Amingaon in order to satisfy the enhanced award. Being aggrieved by the said enhanced award on the basis of the judgment and order dated 08.09.2014 of the Reference Court, the concerned Law Officer of the Railways sought the advice of the Railway Advocate. At first one of the counsel for the Railways advised for accepting the judgment and order instead of filing appeal. However, the applicant Railways was not satisfied with the said opinion and sought for a second opinion from the present conducting counsel. The learned counsel opined on 27.08.2015 to file appeal against the judgment of the Reference Court. Finally, after the opinion of the learned counsel for the Railways dated 27.08.2015 and another one dated 11.09.2015, the concerned officials of the Railways informed the present counsel for the Railways to file 26 number of appeals against the said judgment of the Reference Court. The required papers for filing the appeals, thereafter, as intimated by the learned counsel for the Railways vide letter dated 22.02.2016 and in response to the said letter, the Law Officer of the Railways furnished the certified copy of the common judgment and award dated 08.09.2014 on 25.02.2016. Again, the learned counsel for the Railways submitted the list of Ad-valorem court fees and cost of filing of appeals vide letter dated 02.03.2016. The said Ad-valorem court fees along with signed vakalatnama were sent and the learned counsel for the Railways received the same on 18.03.2016. The appeals after being made ready along with the delay condonation petitions were sent to the Law department of the Railways on 27.05.2016 and thereafter the same were returned on 06.06.2016 and finally it was filed on 13.06.2016. In the process, there was delay of 555 days in filing the said appeals.

6. Vide order date 05.01.2020, it was observed by this Court that the appellant Railways failed to appear before the Reference Court as directed by this Court in LA Appeal Nos. 1/12 to 31/12 fixing 18.07.2013 and in view of the same, necessary explanation was directed to be placed on records to the learned counsel for the Railways.

7. In compliance of the said direction an additional-affidavit was filed on 19.10.2020 wherein it was stated that from April, 2013, all the Chief Engineers (Construction), Dy. Chief Engineers (Construction) along with other related officials were busy with execution of 2 (two) big railway projects and while carrying out the said projects they faced with some

unexpected hindrance in carrying out the construction work and finally the project was completed on 11.08.2014. Due to the said work in the projects and the hindrance thereof none of the Chief Engineers and Dy. Chief Engineers could take steps by engaging any lawyer representing the Railways in the case before the learned Reference Court on 18.07.2013. Mrs. Chakraborty on the basis of the grounds stated in the delay condonation petition coupled with the one stated in the additional affidavit dated 19.10.2020 sought for condonation of delay of 555 days in filing the connected appeals.

8. Mrs. Choudhury, the learned counsel for the private respondents vehemently objected to the grounds taken in the delay condonation petition by Mrs. Chakraborty and referred the negligence on the part of the appellant Railways in not abiding by the direction of this court to appear on 18.07.2013 before the learned Reference Court. Further it is her submission that land acquisition case was initiated in the year 1988 and since then till date, the appeal is yet to be admitted and the said delay is solely due to the negligence on the part of the Railways. Accordingly, it is her contention that the delay should not be condoned owing to the admitted negligence of the appellant.

9. In order to counter the submission of Mrs. Choudhury, Mrs. Chakraborty relies the case laws of (1) ***State of Nagaland –Vs- Lipok AO and Others*** reported in ***AIR 2005 SCC 2191(1)***, (2) ***Shanumtala Devi Jain –Vs- Kuntal Kumari and Others*** reported in ***AIR 1969 SC 575*** and (3) ***G. Ramegowda, Major etc. –Vs- The Special Land Acquisition Officer, Bangalore*** reported in ***AIR 1988 SCC 897*** and submits that the courts are required to be slow in dismissing a delay condonation petition of the Government or any public sector enterprises considering the slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay intentional or otherwise which is routine procedure. As such certain amount of latitude is not impermissible while setting aside the delay condonation petition when the party is a government department.

10. I have given due consideration to the submissions of Mrs. Chakraborty and Mrs. Choudhury. The land acquisition process was initiated in the year 1988 and the private respondents being aggrieved filed reference cases for enhancement of the award assessed by

the Collector. The said reference cases were disposed of and having come to know about the enhanced award in terms of the common judgment and order passed in the reference cases, the appellant Railways challenged the said order by filing LA Appeal Nos. 1/12 to 31/12 on the ground that the Railways was not made party in the said reference cases.

11. This court being satisfied disposed of the LA Appeals Nos. 1/12 to 31/12 on 26.06.2013 with a direction to the parties in the appeal including the appellant Railways to appear before the Reference Court on 18.07.2013. The appellate court while remanding the LA Appeals directed the Reference Court to dispose of the reference cases within a period of three months from the date of appearance of the parties. The common order in the LA Appeal Nos. 1/12 to 31/12 was passed in presence of the learned counsel appearing on behalf of the Railways. Accordingly, the order passed by this court was duly intimated to the concerned officials of the Railways.

12. While filing the delay condonation petitions, there was no mention in respect of the default as to why the Railways could not appear as directed by this Appellate court on 18.07.2013 before the learned Reference Court. Belatedly, once it was pointed out vide order dated 05.10.2020 by the Court, an additional-affidavit was filed wherein the deponent who is the Dy. Chief Engineer (Construction) stated that none of the officials could appear nor engaged any counsel as all the Engineers were engaged in "two big projects" and while executing the said projects they faced problems. The said explanation, in my considered opinion is not at all acceptable inasmuch as from the delay condonation applications and the statements made therein it is the Law Officer who took steps in all the court matters and the engineers have nothing to say nor anything to discuss. Further Mrs. Chakraborty relying the aforesaid decisions of the Apex Court also submits that non consideration of the cause for delay in a liberal way would cause loss of public revenue. The said submission is not at all acceptable to me.

13. The appeals arose out of land acquisition process. The private respondents being dissatisfied with the award of compensation assessed by the Collector, Kamrup district preferred reference cases as provided under the Land Acquisition Act, 1894. The applicant Railways being dissatisfied by the judgment and order enhancing the award preferred appeals

before this Court which were allowed directing the applicants to be impleaded as necessary party in the Reference cases and then decide the cases in presence of Railways and other parties. This court fixed the date for appearance directing all the parties in the appeals to be present in the Reference Court with a further direction for disposal of the cases within a specified time frame. The Railways defaulted in appearing before the Reference Court after the appeals were remanded. The belated explanation for non appearance on the date fixed in the Reference Court was due to the fact that the engineers were busy in other works. The learned counsel for the applicant Railways sought for condonation of delay on the ground of loss of public revenue.

14. The delay if considered was totally due to negligence on the part of the officials of the Railways if we look into the explanation put on record by way of the additional affidavit referred above. This is established as it is stated in the delay condonation applications that the judgment and order after the remand was passed on 08.09.2014 and it came to the knowledge of the officials of the applicant on 12.06.2015 from the letter issued by the Additional Deputy Commissioner, Kamrup. Due to the negligence a right accrued on the private respondents for disbursement of the enhanced award inasmuch as the stipulated period of 90 (ninety) days for filing appeal against the judgment in Reference cases already expired prior to the date of knowledge i.e. on 12.06.2015 from the date of judgment i.e. 08.09.2014. The applicant was unaware of the judgment and order dated 08.09.2014 because of non compliance of the direction of this Court for appearance in the learned Reference Court on 18.07.2013. The private respondents had to give up their land and entitled to be compensated without any delay for their settlement. Railways cannot be permitted to deny the said right accrued on the private respondents due to the negligence on the part of Railways itself. Here it would be proper to take note of the ratio laid by the Apex Court in **Pundlik Jalam Patil –Vs- Jalgaon Medium Project** reported in **(2008) 17 SCC 448** wherein the Apex Court considered various decisions of the Apex Court taking lenient view in condoning delay particularly on the part of the Government as follows:-

“29. It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a life span for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their

legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.

30. Public interest undoubtedly is a paramount consideration in exercising the court's discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. Prompt and timely payment of compensation to the landlosers facilitating their rehabilitation/resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the landlosers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act. Dragging the landlosers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest".

15. The delay sought to be condoned is of 555 days which is an inordinate one. The explanations given for the said delay cannot be accepted moreso when there is admittedly a Law Department in existence with Law officers to look after all the court proceedings. It would be illogical to accept the submission of Mrs. Chakraborty the issue of red tapism in movement of files through the office of the concerned engineers inasmuch as it cannot be accepted that the Law Officer is unaware of the adverse affects that would result due to non compliance of the time period prescribed by the Limitation Act, while filing the appeal nor the consequence arising out of non compliance of a direction given by a Court to a party.

16. In this regard it would be proper to take note of the observation made by the Apex Court in ***Postmaster General and Others –Vs- Living Media India Limited and Another*** reported in ***(2012) 3 SCC 563***. Therein the Apex Court while disallowing the delay condonation petition filed by the office of the Chief Postmaster General, New Delhi considered some of the decisions relied by Mrs. Chakraborty and the issue of leniency shown to the Government department including the ratio held in ***Pundlik Jalam Patil –Vs- Jalgaon Medium Project*** (supra) and held as follows:-

“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few”.

17. If we consider the aforesaid ratio and the factual matrix in the present case in hand, the appellant Railways is having a Law department headed by the Law Officer conversant with the law of limitation and other related laws and under such circumstances, in my considered opinion there was an intentional violation of the direction issued by this court for appearance before the court of learned Reference Court. Once the negligence is established the grounds stated in this application cannot be considered to be sufficient cause in order to condone the delay of 555 days. I would like to reiterate that the length of delay is not to be considered for condonation of the same but the sufficiency of the causes shown for the delay which is required to be considered by a Court. But such causes must not be due to intentional negligence on the part of the applicant seeking for the condonation of the delay. Here in the case it is already held that officials of applicant Railways were negligent and as such I am



inclined to dismiss these applications and consequently the appeals stands dismissed.

18. No costs.

JUDGE

Comparing Assistant