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UNION OF INDIA ETC.

v.

GIANI

(Civil Appeal No. 1884 of 2011)

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FEBRUARY 17, 2011

[DR. MUKUNDAKAM SHARMA AND ANIL R DAVE, JJ.]

*DELAY/LACHES :*

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*Application for condonation of delay in filing appeal – Held: the averments in the application do constitute sufficient cause for not preferring the appeals within time – There is a strong arguable case on behalf of the appellants, therefore, Court would decide the matter on merits by giving the expression ‘sufficient cause’ a pragmatic justice oriented approach – Delay condoned – Constitution of India, 1950 – Article 136.*

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*LAND ACQUISITION ACT, 1894:*

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*Section 23 (1-A) as inserted by amendment Act 68 of 1984 – Compensation under – Held : Sub - s. (1-A) was made applicable to proceedings pending on or after 30.04.1982 – In the instant case, land owners would not be entitled to get the benefit under Sub – s. (1-A) as the proceedings had culminated in passing the award by the Collector on 09.07.1980 i.e. before 30.04.1982, the date from which the amendment was made applicable to pending and subsequent proceedings.*

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**The Union of India filed the instant appeals, though after considerable delay, contending that the respondent land-owners were not entitled to receive compensation u/s. 23 (1-A) of the Land Acquisition Act, 1897, which was granted in their favour by the High Court.**

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Partly allowing the appeals the Court,

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**HELD : 1.1.** The application for condonation of delay in preferring the appeals must be allowed as the statements in the applications for condonation of delay, do constitute sufficient cause in not preferring the appeals within the period of limitation. There is a strong arguable case on behalf of the appellants and, therefore, it is felt necessary that the Court should decide the matter on merit by giving the expression 'sufficient cause' a pragmatic justice oriented approach. Therefore, delay in all the appeals is condoned. [para 3] [981-A-C]

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**2.** Section 23 (1-A) was inserted in the Land Acquisition Act, 1894 w.e.f., 24.9.1984 by way of amendment to the Act by Act 68 of 1984, which was made applicable to proceedings pending on or after 30.04.1982. The said sub-s.(1A) provides that in addition to the market value of the land, the Court would in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification u/s. 4(1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. In sub-s.(2) of s. 23 of the Act, the words "thirty per centum" replaced the words "fifteen per centum", w.e.f., 24.09.1984 and it was also made applicable to certain awards made and order passed after 30.04.1982. [para 6] [981-G-H; 982-A-B]

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*K.S. Paripoornan v. State of Kerala and others* 1994 (3) Suppl. SCR 405 = (1994) 5 SCC 593 and *Pralhad and Others v. State of Maharashtra and another* 2010 (11 ) SCR 916 = (2010) 10 SCC 458 – relied on.

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**2.2.** In the instant case, the acquisition proceeding commenced with the notification u/s. 4 issued on 06.03.1965 and it culminated in passing of the award by

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- A the Collector on 09.07.1980, i.e., before 30.04.1982, the date from which the amending Act 68 of 1984 was made applicable to the pending and subsequent proceedings. Therefore, in terms of the law laid down by the Constitution Bench of this Court in the case of *K.S. Paripoornan*, the respondents are not entitled to the benefit of s. 23(1A). [para 8] [983-H; 984-A-B]

**Case Law Reference:**

- 1994 ( 3 ) Suppl. SCR 405 relied on para 6  
C 2010 (11 ) SCR 916 relied on para 7

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1884 of 2011.

- D From the Judgment & Order dated 31.5.2002 of the High Court of Delhi at New Delhi in RFA No. 465 of 1986.

**WITH**

C.A. Nos. 1887, 1885, 1886 of 2011.

- E P.P. Malhotra, ASG, Brijender Chahar, Rekha Pandey, M. P.S. Tomar, Anil Katiyar for the Appellant.

K.L. Janjani, Raj Singh Rana, Pankaj Kumar Singh, A. Jain, Dr. Vinod Tewari, P.P. Singh for the Respondent.

- F The Judgment of the Court was delivered by

**Dr. MUKUNDAKAM SHARMA, J.** 1. Leave granted in all the petitions.

- G 2. We propose to dispose of all these appeals by this common judgment and order. In all these appeals not only the issues arising for our consideration on merit are identical but also all these appeals were filed by the appellants herein after considerable delay.

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3. Having examined the averments made in the applications for condonation of delay in filing all the appeals and after hearing the learned counsel for the parties, we are satisfied that the application for condonation of delay in preferring the appeals must be allowed as the statements in the applications for condonation of delay, in our view, do constitute sufficient cause in not preferring the appeals within the period of limitation. We, therefore, condone delay in all the appeals. We have taken such a view in this matter as we feel that there is a strong arguable case on behalf of the appellants and, therefore, it is felt necessary that the court should decide the matter on merit by giving the expression sufficient cause a pragmatic justice oriented approach.

4. In all these appeals counsel appearing for the appellant has raised just one issue, namely, that the respondent in each of the appeals is not entitled to receive compensation under Section 23 (1A) of the Land Acquisition Act, 1894 [for short "the Act"] which has been granted in their favour by the orders of the High Court.

5. On 06.03.1995 by issuing notification under Section 4 of the Act, land situated in village-Ziauddinpur, Delhi was sought to be acquired for public purpose, namely, planned development of Delhi. The aforesaid notification was followed by issuance of a declaration under Section 6 of the Act which was issued on 07.01.1969. The Collector passed the award on 09.07.1980 vide his award No. 39/80-81.

6. Section 23 (1A) of the Land Acquisition Act, 1894 was inserted, w.e.f., 24.9.1984, by way of amendment to the Act which was made applicable to proceedings pending on or after 30.04.1982. The said sub-section (1A) provides that in addition to the market value of the land, the Court would in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under Section 4, sub-Section (1), in respect of such

A land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. In sub-section 2 of Section 23 of the Act the words "thirty per centum" replaced the words "fifteen per centum", w.e.f., 24.09.1984 and it was also made applicable to certain awards made and order passed after 30.04.1982. The specific and the only issue which was agitated by the counsel appearing for the appellant before us, during the course of hearing was that, since the aforesaid amendment by Act No. 68 of 1984 inserted a new provision in the nature of sub-section (1A), which was inserted, w.e.f., 24.09.1984 [and was made applicable to proceedings pending on or after 30.04.1982] sub-section (1A) would not be applicable in the present case. In support of the said contention reference was made to the decision of the Constitutional Bench of this Court in *K.S. Paripoornan v. State of Kerala and others* reported in (1994) 5 SCC 593 in which this Court upon a combined reading of Section 23(1A) and Section 30(1) of the Act held as follows: -

"74. .... A perusal of sub-section (1) of Section 30 of the amending Act shows that it divides the proceedings for acquisition of land which had commenced prior to the date of the commencement of the amending Act into two categories, proceedings which had commenced prior to 30-4-1982 and proceedings which had commenced after 30-4-1982. While clause (a) of Section 30(1) deals with proceedings which had commenced prior to 30-4-1982, clause (b) deals with proceedings which commenced after 30-4-1982. By virtue of clause (a), Section 23(1-A) has been made applicable to proceedings which had commenced prior to 30-4-1982 if no award had been made by the Collector in those proceedings before 30-4-1982. It covers (i) proceedings which were pending before the Collector on 30-4-1982 wherein award was made after 30-4-1982 but before the date of the commencement of the amending Act, and (ii) such proceedings wherein award was made by the Collector after the date of the

commencement of the amending Act. Similarly Section 30(1)(b) covers (i) proceedings which had commenced after 30-4-1982 wherein award was made prior to the commencement of the amending Act, and (ii) such proceedings wherein award was made after the commencement of the amending Act. It would thus appear that both the clauses (a) and (b) of sub-section (1) of Section 30 cover proceedings for acquisition which were pending on the date of the commencement of the amending Act and to which the provisions of Section 23(1-A) have been made applicable by virtue of Section 30(1). If Section 23(1-A), independently of Section 30(1), is applicable to all proceedings which were pending on the date of the commencement of the amending Act, clauses (a) and (b) of Section 30(1) would have been confined to proceedings which had commenced prior to the commencement of the amending Act and had concluded before such commencement because by virtue of Section 15 the provisions of Section 23(1-A) would have been applicable to proceedings pending before the Collector on the date of commencement of the amending Act. There was no need to so phrase Section 30(1) as to apply the provisions of Section 23(1-A) to proceedings which were pending before the Collector on the date of the commencement of the amending Act. This only indicates that but for the provisions contained in Section 30(1) Section 23(1-A) would not have been applicable to proceedings pending before the Collector on the date of commencement of the amending Act."

7. A similar issue again came up for consideration before this Court in *Pralhad and Others v. State of Maharashtra and another* reported in (2010) 10 SCC 458 wherein reference was made and reliance was placed in the decision of *K.S. Paripoornan* (supra).

8. In the present case the acquisition proceeding

- A commenced with the notification under Section 4 issued on 06.03.1965 and it culminated in passing of the award by the Collector on 09.07.1980, i.e., before 30.04.1982, the date from which the amending Act 68 of 1984 was made applicable to the pending and subsequent proceedings. Therefore, in terms
- B of the law laid down by the Constitution Bench decision of this Court in the case of *K.S. Paripooman* (supra) the respondents are not entitled to the benefit of Section 23(1A).

C 9. All the appeals, therefore, are partly allowed to the aforesaid extent and disposed of leaving the parties to bear their own costs.

R.P.

Appeals partly allowed.