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K. SUBBARAYUDU AND OTHERS

v.

THE SPECIAL DEPUTY COLLECTOR (LAND ACQUISITION)

(Civil Appeal No. 9288 of 2017)

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JULY 19, 2017

[KURIAN JOSEPH AND R. BANUMATHI, JJ.]

Land Acquisition Act, 1894 – s. 54 – Compensation for fruit bearing trees – Land acquisition by award dated 30.01.1992 – Compensation for the fruit bearing trees, Rs. 50-70 for each lime tree and Rs. 32/- for each pomegranate tree – Reference court enhanced the compensation to Rs. 100/- per lime tree, but for pomegranate tree it remained same – Appeal by claimants seeking enhancement of compensation – Dismissed by the High Court on the ground of inordinate delay of 3671 days – Held: There may be omission on the part of the claimants to adopt extra vigilance; but same need not be used as a ground to depict them with negligence or want of bona fide – In case of acquisition of lands of agriculturists, the courts ought to adopt a pragmatic approach to award just and reasonable compensation and not pedantic approach – Since the appellants/claimants are the agriculturists whose lands were acquired and when similar situated agriculturists were given a higher rate of compensation, no reason to decline the same to the appellants, merely on the ground of delay – More so, in a similar matter, the High Court had condoned the delay of 3386 days in filing the land acquisition appeal – Furthermore, award of compensation in relation to fruit bearing trees depends on facts and circumstances of each case – Appellant sought compensation of Rs.3,000/- per pomegranate tree relying on judgment of this Court which cannot be made applicable to the instant case since the award of compensation in the said case was of 08.03.1999, as opposed to instant award of 30.01.1992 – Period of about seven years is a considerable period to be taken note of while computing cost of planting and raising fruit bearing trees – It is obvious that seven years back a fruit bearing tree would have fetched lesser income than it would fetch now – On facts, appellants awarded compensation

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of Rs.1,500/- for each pomegranate tree – As regards lime trees, fresh limes are available throughout the year and have good market and the lime trees are earning income almost throughout the year – Compensation of Rs. 100/- per each lime tree enhanced to Rs.250/- – Said compensation is awarded along with all statutory benefits – However, appellants not entitled to any interest during the period of delay of 3671 days.

State of Nagaland v. Lipok AO and Others (2005) 3 SCC 752; [2005] 3 SCR 108; 2005 (4) JT 10; Dhiraj Singh (D) Thr. Lrs. Etc. Etc. v. Haryana State and Ors. Etc. Etc. 2014 (9) SCALE 441; Kerala State Electricity Board v. Livisha and Ors. (2007) 6 SCC 79 : [2007] 7 SCR 3562; Shaik Imambi v. Special Deputy Collector (Land Acquisiton), Telugu Ganga Project (2011) 11 SCC 639 – referred to.

Case Law Reference

[2005] 3 SCR 108	referred to	Para 12
2014 (9) SCALE 441	referred to	Para 13
[2007] 7 SCR 3562	referred to	Para 15
(2011) 11 SCC 639	referred to	Para 18

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9288 of 2017.

From the Judgment and Order dated 12.07.2016 of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in L.A.A.S.M.P. No. 61 of 2015 in L.A.A.S. (SR) No. 12334 of 2014.

Thomas P. Joseph, Sr. Adv., V. Sridhar Reddy, Abhijit Sengupta, Advs. for the Appellants.

Guntur Prabhakar, Ms. Purna Singh, Advs. for the Respondent.

A The Order of the Court was delivered by

ORDER

R. BANUMATHI, J. 1. Leave granted.

B 2. This appeal by way of special leave under Section 54 of the Land Acquisition Act, 1894 has been preferred by the claimant assailing the judgment and order dated 12.07.2016 in L.A.A.S.M.P. No.61 of 2015 in L.A.A.S.(SR) No.12334 of 2014 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh by which the High Court declined to condone the delay of 3671 days in filing the appeal and dismissed the appeal.

C 3. A Notification under Section 4(1) of the Land Acquisition Act, 1894 was issued on 01.10.1990 for acquiring land to an extent of Acs.32.77 in Reach No.11 of Nellopalli village for foreshore submersion of Kandaleru Reservoir under Telugu Ganga Project. After conducting the award enquiry, Land Acquisition Officer, Telugu Ganga Project, Rapur passed an award, in Award No.12/91-92 dated 30.01.1992. The award was passed after taking into account the sale statistics for the preceding three years prior to the date of notification under Section 4(1) of the Land Acquisition Act which was obtained from the Sub-Registrar, Rapur and after verification of all sales, the land value is fixed by the Land Acquisition Officer and approved by the Special Collector, Telugu Ganga Project, Nellore as per norms prescribed under the Land Acquisition Act, 1894 amended in 1984. The Land Acquisition Officer (LAO) awarded compensation for cultivable dry lands at Rs.9,000/- per acre and for cultivable waste land at Rs.7,000/- per acre. The Land Acquisition Officer also awarded compensation of Rs.50-70 for each lime tree and compensation of Rs.32 for each pomegranate tree. The land was taken possession on 02.03.1994 and compensation paid to the land owners.

F 4. As against compensation awarded by the Land Acquisition Officer, reference was made under Section 18 of the Act to the Senior Civil Judge, Gudur. Before the reference court, on behalf of the claimants, CW-1 was examined and Exs.A1 to A5 were marked. On behalf of the referring officer, one of its employees was examined as R.W.1 and the particulars showing the compensation awarded by the LAO, Ex.B1 was marked. The Reference Court by its judgment and order dated 06.08.2004 in LAOP No.22/1993 enhanced the market value

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of land from Rs.9,000/- to Rs.12,000/- for cultivable dry land and to A
Rs.7000/- to Rs.10000/- for cultivable waste land per acre. Further the
Reference Court fixed the market value of the trees to Rs.100/- per tree
as against Rs.50/- to Rs.70/- awarded by the Land Acquisition Officer
and confirmed the rate of Rs.32/- per pomegranate tree as fixed by the
Land Acquisition Officer basing on the age of the trees. B

5. Dissatisfied with the enhanced compensation, the appellants/
claimants approached the High Court referring to the order in A.S.
No.1749/2004 dated 01.03.2013 and other judgments of Andhra Pradesh
High Court. However, there was a delay of 3671 days in so preferring
the appeal. The High Court dismissed L.A.A.S.(MP) No.61/2015 in C
L.A.A.S. (SR) No.12334/2014 on the ground of inordinate delay of 3671
days since the High Court was of the view that no sufficient cause was
shown for the delay and held that the delay sought to be condoned was
not on account of a *bona fide* mistake but was merely intended to make
gain basing on the assessment of value of pomegranate trees in the
decisions of *Peddireddy Madhava Reddy* and *Pidugu Seshugari* D
Lakshmi Devi.

6. Aggrieved by the order of the High Court, the appellants are
before us by way of special leave to appeal.

7. The learned counsel for the appellants submitted that the High
Court failed to appreciate that the claimants have given satisfactory E
explanation for the delay of 3671 days in filing the appeal before the
High Court and while so the High Court has erred in declining to condone
the delay. It was further submitted that in L.A.S.S.No.46/2015, the
High Court was pleased to condone the delay of 3386 days in filing the
land acquisition appeal suit subject to the condition that in the event, the F
appellants/claimants succeed in the appeal, she is not entitled to any
interest in respect of the period of delay and the same approach ought to
have been given in case of appellants also. In so far as the quantum of
compensation, learned counsel for the appellant has relied upon the
decision of this Court in Civil Appeal Nos.11404-405 of 2016 dated G
29.11.2016 whereby this Court has awarded compensation of Rs.3,000/
- per pomegranate tree in connection with lands acquired for Somashila
Project submergence. The learned counsel for the appellant prayed
that the same amount of compensation of Rs.3,000/- per pomegranate
tree be awarded to the appellant.

A 8. *Per contra*, supporting the judgment of the High Court, the
 learned counsel for the respondent submitted that reason for inordinate
 delay of 3671 days was not satisfactorily explained and the High Court
 rightly exercised its discretion in declining to condone the delay. Insofar
 as the judgment in Civil Appeal Nos.11404-11405 of 2016 is concerned,
 B it is submitted that the said order relates to Somashila Project
 submergence of which the award was of the year 1999 and the same
 cannot be applied to the present case.

9. Heard the learned counsel for the parties at some length.
 Perused the impugned judgment and considered the documents and other
 materials placed on record.

C 10. The High Court dismissed the claimants' appeal mainly on
 the ground of delay of 3671 days in filing the appeal. On perusal of
 records, it is seen that the appellants have explained the reason for the
 delay in filing the appeal stating that they have entrusted the relevant
 D papers to their co-villager namely, viz., Pullaiah who is well-conversant
 with the court proceedings and the said Pullaiah has also taken steps to
 engage an advocate at Hyderabad and the said Pullaiah informed that
 the appeal was filed and left for Kuwait to eke out his livelihood. Thus
 the appellants/claimants were under the impression that the appeal has
 been filed. The claimants have further stated that when they inquired
 E the said Pullaiah, he informed them that he went to the house of Sri
 Jaganmohan Raju, Advocate and he learnt that the said Advocate is no
 more and expired in 2012 itself and on enquiry with the clerk of the said
 advocate, he learnt that no appeal has been filed and this has caused a
 delay of 3671 days in filing the appeal. The High Court rejected the
 explanation given by the appellants on the ground that there are
 F contradictions between the affidavit filed by the said Pullaiah and the
 stand of the claimants and being not satisfied with the reason for the
 delay of 3671 days in preferring the appeal, the High Court dismissed
 the appeal.

G 11. Before the High Court, the appellants relied upon *Yellasiri*
Sarojanamma's case, in L.A.S.S. No.46 of 2015, in which the High
 Court condoned the delay of 3386 days in filing the land acquisition appeal
 suit subject to the condition that in the event, the appellant/claimant
 thereon succeed in appeal, she is not entitled to any interest in respect of
 the period of delay. The appellants contended that the same approach
 ought to have been adopted in the case of appellants also. Insofar as,
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the reliance placed upon by the claimants in L.A.S.S. No.46/2015, the High Court seems to have brushed aside the contention of the appellants on the puerile ground that the relevant fact situation in the said case is not forthcoming in the said order. In our view, the High Court was not right in adopting a different yardstick in the case of the appellants in not condoning the delay. A

12. The term “sufficient cause” is to receive liberal construction so as to advance substantial justice, when no negligence, inaction or want of *bona fide* is attributable to the appellants, the Court should adopt a justice-oriented approach in condoning the delay. In *State of Nagaland v. Lipok AO and Others* (2005) 3 SCC 752: 2005 (4) JT 10, it was held as under:- B C

“Section 5 is to be construed liberally so as to do substantial justice to the parties. The provision contemplates that the court has to go into the position of the person concerned and to find out if the delay can be said to have been resulted from the cause which he had adduced and whether the cause recorded in the peculiar circumstances of the case is sufficient”. D

13. With the acquisition of lands, the lifeline of the agriculturist is lost. There may be omission on the part of the claimants to adopt extra vigilance; but same need not be used as a ground to depict them with negligence or want of *bona fide*. In case of acquisition of lands of agriculturists, the courts ought to adopt a pragmatic approach to award just and reasonable compensation and not pedantic in their approach. In *Dhiraj Singh (D) Thr. Lrs. Etc. Etc. v. Haryana State and Ors. Etc. Etc.* 2014 (9) SCALE 441, it was held as under:- E

“15. Equities can be balanced by denying the appellants’ interest for the period for which they did not approach the Court. The substantive rights of the appellants should not be allowed to be defeated on technical grounds by taking hyper technical view of self-imposed limitations. In the matter of compensation for land acquisition, we are of the view that approach of the Court has to be pragmatic and not pedantic.” F G

14. When the concerned court has exercised its discretion either condoning or declining to condone the delay, normally the superior court will not interfere in exercise of such discretion. The true guide is whether the litigant has acted with due diligence. Since the appellants/claimants H

A are the agriculturists whose lands were acquired and when similar situated
agriculturists were given a higher rate of compensation, there is no reason
to decline the same to the appellants. Merely on the ground of delay
such benefit cannot be denied to the appellants. The interest of justice
would be served by declining the interest on the enhanced compensation
and also on the *solatium* and other statutory benefits for the period of
B delay.

15. Insofar as the compensation for the pomegranate trees, the
appellants have placed reliance on the judgment of this Court dated
29.11.2016, in C.A. Nos.11404-11405 of 2016. Planting, raising and
making commercial use of fruit bearing trees is a painstaking affair and
C cost of the same is consistently on rise as the years are passing by
which is to be kept in view. Award of compensation in relation to fruit
bearing trees depends on facts and circumstances of each case. It has
been held in *Kerala State Electricity Board v. Livisha and Ors.* (2007)
6 SCC 792, in the following terms:

D “11. So far as the compensation in relation to fruit bearing trees
are concerned the same would also depend upon the facts and
circumstances of each case. We may, incidentally, refer to a recent
decision of this Court in *Land Acquisition Officer v. Kamandana
Ramakrishna Rao* AIR 2007 SC 1142 wherein claim on yield basis
E has been held to be relevant for determining the amount of
compensation payable under the Land Acquisition Act, same
principle has been reiterated in *Kapur Singh Mistry v. Financial
Commission and Revenue Secretary to Govt. of Punjab and Ors.*
, *State of Haryana v. Gurcharan Singh and Anr.* [1995] 1 SCR
408, and *Airports Authority of India v. Satyagopal Roy* [2002] 2
F SCR 505.”

16. In the facts and circumstances of the said case, in C.A.
Nos.11404-405 of 2016, considering the cost of planting and efforts
involved in growing trees in general and in particular raising the
pomegranate trees over the efflux of time, this Court deemed it
G appropriate to award Rs.3,000/- as compensation for each of the
pomegranate tree.

17. However, the compensation of Rs. 3000/- per pomegranate
tree, as has been awarded in the abovementioned case, cannot be made
applicable to the present case, considering the fact that award of
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compensation by Land Acquisition Officer in the said case dated 08.03.1999, as opposed to award in the present case which is dated 30.01.1992. A period of about seven years is a considerable period to be taken note of while computing cost of planting and raising fruit bearing trees. It is obvious that seven years back a fruit bearing tree would have fetched lesser income than it would fetch now. In the facts and circumstances of the present case and taking into consideration that the appellants were also awarded compensation for the land, we deem it appropriate to award compensation of Rs.1500/- for each pomegranate tree.

18. In so far as the lime trees are concerned, fresh limes are available throughout the year and have good market and the lime trees are earning income almost throughout the year. The Reference Court enhanced the compensation of Rs.70/- to Rs.100/- per tree as against the compensation of Rs.52/- to Rs.70/- awarded by the Land Acquisition Officer. While considering the question of awarding compensation to lime trees, in *Shaik Imambi v. Special Deputy Collector (Land Acquisiton), Telugu Ganga Project* (2011) 11 SCC 639, this Court held as under:-

“10. There is no specific documentary evidence in regard to the actual income from the orchard. As the reports of experts of the state government assessed the gross annual income from each tree as Rs.150-200/-, it would be appropriate to take the average thereof, namely Rs.175/- as the annual income per tree in this case. If Rs.35/- is deducted towards the cost of cultivation and other expenses as recommended by the experts, the net annual income would have been Rs.140/- per tree or Rs.1,06,540/- for 761 trees.”

Applying the ratio of the above decision, Rs.250/- is awarded as the annual income per tree. Compensation of Rs.100/- per each lime tree enhanced to Rs.250/- is awarded.

19. Compensation awarded to the appellants is enhanced to Rs.1,500/- for each pomegranate tree and Rs.250/- for each lime tree. The appellants are also entitled to all statutory benefits like *solatium* and other benefits and interest on the same. It is further directed that the

A appellants shall not be entitled to any interest during the period of delay of 3671 days. The appeal is partly allowed in the above terms. Parties are to bear their respective costs.

Nidhi Jain

Appeal partly allowed.