IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11084 of 2008
To
SPECIAL CIVIL APPLICATION No. 11092 of 2008

For Approval and Signature:

HONOURABLE MR. JUSTICE MOHIT S. SHAH
HONOURABLE MS.JUSTICE H.N.DEVANI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

PRAHLADBHAI TRIKAMBHAI PATEL - Petitioner(s)
Versus
SPECIAL LAND ACQUISITION OFFICER & 1 - Respondent(s)

==========

Appearance :
MR SM SHAH with MR YATIN SONI for Petitioner
MR APURVA DAVE, ASSTT. GOVERNMENT PLEADER for Respondent(s) : 1,
MR AJAY R MEHTA for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR. JUSTICE MOHIT S. SHAH

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 30/12/2008

CAV JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1. By these petitions under Article 227 of the Constitution of India, the petitioners have challenged the order dated 5th May, 2008 passed by the learned Principal Senior Civil Judge, Gandhinagar whereby the petitioners' applications for condoning the delay caused in filing review applications in Land Acquisition References No.316 to 318 of 2000 have been rejected.

2. Briefly stated, the facts giving rise to the present petitions are that the petitioners' lands situated in the sim of village Uvarsad, Taluka District Gandhinagar were acquired for the purpose of O.N.G.C. Drilling Site No.K.414 (K.L.D.T.). The Special Land Acquisition Officer awarded compensation to the tune of Rs.18/- per sq. mt. Not being satisfied with the award, the petitioners filed references under section 18 of the Land Acquisition Act (hereinafter referred to as "the Act") claiming compensation at the rate of Rs.200/- per Sq. mt. By a judgement and award dated 8th August, 2006 passed by the learned Principal Senior Civil Judge, Gandhinagar, the reference applications came to be partly allowed by directing the respondents to pay additional compensation of Rs.46.35 ps. per sq. mt. over and above the compensation already awarded by the Special Land Acquisition Officer, i.e. a total of Rs.64.35 ps. per sq. mt. While awarding the aforesaid amount, the Reference Court had placed reliance upon its earlier judgement and award rendered on 8th August, 2005 in Land Acquisition Cases No.2/2002 to 4/2002. It appears that the petitioners were satisfied with the compensation determined by the Reference Court and did not challenge the same before the higher forum.

However, the claimants in Land Acquisition Cases No.2/2002 to 4/2002 challenged the judgement and award dated 8th August, 2005 made in the said cases before this Court by way of appeals under section 54 of the Act, being First Appeals No.3202 to 3204 of 2006 wherein their claim was that the Reference Court committed error in awarding only Rs.55/- as additional compensation to them for their acquired lands, over and above compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.16.50 ps. per sq. mt. and that they should be awarded further additional amount of compensation at the rate of Rs.94.10 ps. per sq. mt. In the said appeals the appellants therein moved applications praying that they be allowed to adduce additional documentary evidence at the appellate stage. By a common judgement and order dated 5th May, 2007 passed in the said civil applications and the first appeals as well as in First Appeals No.3809 to 3812 of 2006 which arose out of judgement and award dated 5th August, 2005 rendered in Land Acquisition Reference Cases No.59/02 to 61/02 and 63/02, a Division Bench of this Court allowed the civil applications and permitted the applicants to lead additional evidence before the Reference Court. The Court set aside the judgement and award dated 8th August, 2005 rendered in Land Acquisition Reference Cases No.2/02 to 4/02 as well as judgement and award dated 8th August, 2005 rendered in Land Acquisition Reference Cases No.59/02 to 61/02 and 63/02 and remanded the matters to the Reference Court for deciding the matters afresh after permitting the parties to lead additional evidence.

3. Pursuant to the order of remand the Reference Court decided the matters afresh and by a judgement and award dated 24th August, 2007 in Land Acquisition Reference Cases No.2/2002

to 4/2002 partly allowed the reference applications and awarded additional compensation at the rate of Rs.233.50 ps. per sq. mt. over and above the amount of compensation already awarded by the Special Land Acquisition Officer, i.e. a total amount of Rs.250/- per sq. mt. It may be pertinent to note that the original claim in LAR NO.2/2002 to 4/2002 was Rs.200/- per sq.mt. The Reference Court had awarded at total of Rs.71.50 ps. per sq. mt. Before this Court they were seeking further additional amount of compensation at the rate of Rs.94.10 ps. per sq. mt. (71.50 + 94.10 = Rs.165.60 ps. per sq. mt.). However, after remand, it appears that the claim came to be raised to Rs.1000/- per sq. mt. and the Reference Court awarded an additional amount of Rs.233.50 ps. per sq. mt. Be that as it may.

Pursuant to the said judgement and award dated 24th August, 2007, the petitioners herein moved applications for review before the Reference Court, contending that the awards in their case were based upon the Award passed in LAR No.2/2002 to 4/2002. Now that award on the basis of which compensation had been granted to them has been set aside and a fresh judgement and award has been made giving higher rate of compensation, the award passed in the Reference Applications made by the petitioners is also required to be modified and they are entitled to an enhanced rate of compensation on the basis of the said award. Since there was a considerable delay of 554 days in filing the review applications, the petitioners also filed applications under section 5 of the Limitation Act, praying for condoning the delay. By the impugned order dated 5th August, 2008 the applications were dismissed. It is this order which is subject matter of challenge in these petitions.

4. Heard Mr. S. M. Shah learned Advocate with Mr. Yatin Soni learned Advocate for the appellants in all the appeals and Mr. Ajay Mehta learned Advocate appearing on an advance copy for the respondent No.2 O.N.G.C.

5. Mr. S. M. Shah learned Advocate for the appellants, has submitted that the award made in the reference applications filed by the present petitioners was based upon the award dated 8th August, 2005 rendered in Land Acquisition References No.2/2002 to 4/2002. That subsequently pursuant to the order of remand made in the First Appeals preferred against the said judgement and award, the said reference applications were decided afresh and the amount of compensation was considerably enhanced. It was submitted that once the earlier awards dated 8th August, 2005 were quashed by this Court, the basis for the awards made in the reference applications filed by the petitioners was no longer in existence and the same stood substituted by the fresh award, hence, the fresh award should substitute the earlier award and form the basis for determination of compensation in the petitioners' case, hence, the petitioners have a strong case for review of the judgement and award dated 8.8.2006 made in the reference applications filed by the petitioners. It is submitted that as such there was no delay in filing the review applications inasmuch as the period of limitation would start running only from the date of knowledge and that there was no delay in filing the review applications from the date of knowledge. It is submitted the petitioners were not aware of the judgement and award dated 24th August, 2007 made after the order of remand in LAR No.2/02 to 4/02. That on 1st March, 2008 there was a function in village Uvarsad for celebrating 75 years of the temple of Goddess Brahmani in the said village. On that day the residents of the village had gathered together

and it was on the said occasion that the claimants of LAR No.2/02 to 4/02 informed the present petitioners that after remand by the High Court, the Reference Court has further enhanced the compensation made in their case. That immediately thereafter, the petitioners took steps for filing the review application. It is submitted that as such there was no delay in filing the review application.

6. It is further submitted that in any case the period of limitation would start running from the date from which the cause of action arose. It is urged that in the present case, the cause of action for filing review application arose only on 24th July 2007 when the Reference Court passed the judgement and award in LAR No.2/02 to 4/02 and thereafter when the petitioners came to know of the same on 1st March, 2003, hence, there was no delay in filing the review application.

7. In support of his submissions the learned Advocate for the petitioners has placed reliance upon the decision of the Supreme Court in the case of ***K.L.E. Society v. Siddalingesh***, 2008(3) G.L.H. 221 which deals with the Court's inherent powers under section 482 of the Code, for the proposition that the authority of the court exists only for the advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent abuse. That it would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. It is further submitted that review is competent when there is a misconception either of law or on facts. In the present case the misconception is regarding the market price. If the market price is changed in the base award, the petitioners can also take advantage of the same. In support of the said submission reliance is also placed

upon a decision of the Calcutta High Court in the case of ***In re : Mahamaya Banerjee***, AIR 1989 Calcutta 106 wherein the trial court had rejected the application of the petitioner therein solely on the ground that the phrase “sufficient cause” in O.47, R.1 of the Code did not include misconception of fact and/or law of the Advocate and inherent power could not be used to correct the erroneous view of the learned Advocate. The High Court did not agree with the said view. The Court held that by filing the application, the petitioner therein had prayed for justice, which was denied to her owing to patently wrong steps taken by her under legal advice. The Court held that in such a situation the Court would be failing in its duty if it does not invoke its inherent powers to come to her rescue. It was further held that every Court functions for the purpose of doing justice according to law and therefore shall be deemed to possess, as a necessary corollary thereto, all such powers as may be necessary to do the right and undo a wrong in course of its such functioning. That so long as it is not trammeled or trampled by any express statutory provision inherent power may be invoked and exercised to meet any judicial exigency. It is accordingly submitted that in the facts and circumstances of this case the Court ought to exercise its inherent powers and allow the application of the petitioners. It is further submitted that in any case sufficient cause has been made out by the petitioners, hence the Reference Court was not justified in rejecting the applications for condonation of delay.

8. The learned Advocate for the petitioners has also submitted that at this stage while considering the question as to whether the reference court was justified in rejecting the application for condonation of delay, this Court is not required to go into the merits of the review application. In support of the said

contention reliance is placed upon the decision of a learned Single Judge of this Court in the case of ***Pushpaben Balwantrai v. Nandkumar Ramanlal & Anr***. 2004 (4) GLR 3015. wherein in the facts of the said case the Appellate Bench of the Small Causes Court had rejected the petitioner's application for condonation of delay after going into the merits of the case and on the ground that the power of attorney was not related to the original defendant. The learned Single Judge allowed the petition holding that while deciding the application for condonation of delay, the Court is required to take into consideration whether there is any sufficient ground for condoning delay. It was held that merits of the case cannot be decided unless the delay is condoned and the matter is taken up for hearing after condonation of delay.

9. The next submission advanced by the learned advocate for the petitioners is that reliance placed by the respondents on the decision of the Supreme Court in the case of ***Des Raj (Deceased) through LRS. and others v. Union of India and another***, (2004)7 SCC 753 is misconceived as the said decision was on the merits of the case and was not required to be considered at this stage. It is submitted that even on merits the petitioners have a strong case. It is conteded that if the market price is changed in the case, which formed the basis for the award in the petitioners' case, the petitioners are entitled to the benefit of the change in the market price and as such have a strong case for review.

10. The learned Advocate for the petitioners also placed reliance upon a decision rendered by a Division Bench of this Court in the case of ***Hiragar Dayagar & Anr. V. Ratanlal Chunilal and others***, 1972 (XIII) GLR 181 to submit that the reference Court is an appellate court and as such it has to give the

benefit of order XLI Rule 33 of the Code of Civil Procedure. It is accordingly submitted that the in view of the provisions of Order XLI Rule 33 though the petitioners had not filed any appeal against the order of the Reference Court, they were entitled to a decree or order in terms of the order made in the case of the claimants in LAR No.2/02 to 4/02. In conclusion it is submitted that the Reference Court was not justified in dismissing the petitioners' applications for condonation of delay and as such the applications require to be allowed and the review applications are required to be decided on merits by the Reference Court.

11. On the other hand, Mr. Ajay Mehta learned advocate for the acquiring body, i.e., the ONGC has vehemently opposed the petitions. Attention is invited to the relief claimed in the review applications to submit that the petitioners have claimed parity with the claimants in LAR No.2/02 to 4/02, 5/02, 6/02, 59/02 to 61/02, 63/02, 71/02, 113/02, 114/02 and 302/05. It is submitted that against the judgement and award passed in some of the aforesaid reference cases, the respondent ONGC has already preferred appeals before this Court being First Appeals No.4124 to 4127 of 2008 which are admitted by an order dated 2nd September, 2008 and vide order of even date made on Civil Applications for stay, the respondent ONGC has been directed to deposit 50% of the amount of compensation. It is urged that the petitioners were satisfied with the compensation awarded to them by the Reference Court and did not challenge the same before the higher forum and as such the judgment and award passed in the references filed by the petitioners have attained finality. It is submitted that merely because the claimants in case of the award based upon which the compensation had been determined in the petitioners' case had carried the matter

further and succeeded, is no ground for the petitioners to seek higher amount of compensation. It is submitted that if the submissions made on behalf of the petitioners are accepted there would be no finality to the judgment. It is also submitted that even on merits of the applications for condoning delay, no plausible explanation has come forth explaining the delay caused in the filing of the review application. It is urged that a subsequent decision passed in some other matter can never be the cause of action for filing a review application. It is submitted that even otherwise the review application is devoid of any merit and is squarely covered by the decision of the Supreme Court in the case of ***Des Raj v. Union of India***, (2004) 7 SCC 753 wherein in a similar set of facts, the Supreme Court has held that the grounds raised in the review applications were not grounds which could be accepted to review or modify the judgment of the High Court. It is accordingly submitted that the application for condonation of delay being without any merit has rightly been rejected by the Reference Court and does not warrant any interference by this Court.

12. As can be seen from the impugned order dated 5th May, 2008 passed by the learned Principal Senior Civil Judge, Gandhinagar, the learned Judge has found that there is inordinate delay in filing the application and no satisfactory reason has been given by the applicant for condoning delay of 554 days. The learned Judge has further noticed that the applicant has not produced any other affidavit or documentary evidence in support of the reasons stated in the application. The learned Judge was of the opinion that there is an inordinate delay in filing the review petition and that sufficient reasons have not been given and has accordingly dismissed the application.

13. Article 124 of the Schedule to the Limitation Act provides that the period of limitation for a review of judgment by a court other than the Supreme Court is thirty days from the date of the decree or order. Thus, the starting point of limitation is the date of the order and not from the date of knowledge of the order. Moreover, time runs from the date of the decree or order; and not from the date when the applicant discovered new evidence. Examining the facts of the present case in the light of the aforesaid statutory provision, as the judgement and award in the Reference Cases filed by the petitioners was made on 8th August, 2006, that would be the starting point of limitation. Hence, the contention raised on behalf of the petitioners that limitation starts running from the date of knowledge of the subsequent award, does not merit acceptance.

14. From the facts and contentions noted hereinabove, it is apparent that after the judgment and award dated 8th August, 2006 was passed on the reference applications made by the petitioners, the petitioners were not aggrieved by the same and did not think it fit to challenge the same. However, the claimants of LAR No.2/02 to 4/02 being dissatisfied with the award made in their case, challenged the same before this Court and Division Bench set aside the awards made in the said cases and remanded the matter to the Reference Court for deciding the same afresh after permitting them to lead additional evidence. However, surprisingly apart from permitting the said claimants to lead additional evidence as directed by this Court, the Reference Court also allowed the applications made by the said claimants for enhancement of their claim from Rs.200/- per sq. mt. to Rs.1000/- per sq. mt.

and ultimately vide judgment and award dated 24th August, 2007 awarded additional compensation of Rs.233.50 ps. per sq. mt. i.e. a total of Rs.250 per sq. mt. According to the petitioners, the passing of this judgement and award has given rise to the cause of action for filing the review application. Assuming for the sake of argument the starting point of limitation is the date when the so-called cause of action arose, even then the judgement and award which forms the basis for review was made on 24th August, 2007 whereas the review application was filed on or about 12th March, 2008 which is after a period of more than six months from the date of the award. Hence, even if the period of delay is computed from that date, there is a delay of more than five months. From the facts noted hereinabove it is apparent that what the petitioners are seeking is relief akin to the benefit under section 28A of the Land Acquisition Act. However, since such relief is not available to a claimant who has filed a reference application, it appears that the petitioners have resorted to filing a review application. In case of an application under section 28A of the Act, the period of limitation is three months from the date of the award on the basis of which the redetemination of compensation is sought. In the present case the said period would be on or about 24th November, 2007. However, in the present case, the review applications have been filed more than three months thereafter. In case of an application under section 28A of the Land Acquisition Act the period of three months cannot be extended and no application can be entertained beyond the said period. In the context of the provisions of section 28A of the Land Acquisition Act the Supreme Court in the case of ***State of A.P. v. Marri Venkaiah***, (2003) 7 SCC 280 10, has held thus:

“ In our view, with regard to first contention that S. 28-A is

beneficial provision, there cannot be any dispute. However, the advantage of the benefit which is conferred is required to be taken within the stipulated time. A landowner may be poor or illiterate and because of that he might not have filed reference application but that would not mean that he could be negligent in not finding out whether other landowners have filed such applications. Whosoever wants to take advantage of the beneficial legislation has to be vigilant and has to take appropriate action within prescribed time. He must at least be vigilant in making efforts to find out whether other landowner has filed any reference application and if so what is the result. If that is not done then law cannot help him. Admittedly, in the present case, the award enhancing the compensation was pronounced by the Civil Court by order dated 29th November, 1984 and applications were filed on 27th November, 1989 i.e. after lapse of 5 years. In such case, as the applicant was having an opportunity of knowing the award and/or he was required to make efforts of knowing about such proceedings, he must be presumed to have had knowledge of the award. If the contention of the learned counsel for the respondents is accepted, it will create total vagueness and uncertainty as landowners can claim that they have come to know of the award after long lapse of time and, therefore, the application even though beyond time may be entertained. If such applications are entertained, there may not be any finality to the award and payment of compensation. Result may be that such proceedings may adversely affect where land is acquired by the Government for a project which is to be carried out by local bodies."

15. In the light of the principles laid down in the aforesaid decision, the learned Advocate for the acquiring body is justified in contending that if such applications are entertained

there will be no finality to the award and payment of compensation. Adverting to the question of delay, even if the date of the award on the basis of which review is sought for is considered to be the starting point for the purpose of computing the period of limitation, even then there is considerable delay in filing the application and the said delay is not properly explained. The only case put forth by the petitioners is that they were not aware of the judgement and award and as soon as it came to their knowledge they had filed the review application. This explanation has to be considered in the light of the above-referred decision of the Supreme Court as well as in the light of the provisions of section 28A of the Land Acquisition Act. In the first place the petitioners cannot claim the benefit of the said provision and assuming for the sake of argument that it is permissible for them to do so, the maximum period within which the review ought to have been filed would be three months from the date of the award on the basis of which review is sought. In the present case, the review application is filed much beyond the said period. Hence, the review application is hopelessly time barred and no sufficient cause has been made out for condoning the delay. In the circumstances, the Reference Court was fully justified in rejecting the application for condonation of delay.

16. The decisions on which reliance has been placed upon by the learned Advocate for the petitioners to submit that the Court should invoke inherent powers in the interest of justice also do not carry the case of the petitioners any further inasmuch as there is no merit in the review application. It is settled legal position that while considering an application for condonation of delay the merits of the case are not required to be gone into. But it is equally well settled that a meritorious case

should not be thrown out merely on the ground of delay caused in filing the matter. As sufficient cause is not made out for condoning delay, we had thought it fit to examine if there was any merit in the matter. However, on facts, the present case is squarely covered by the decision of the Apex Court in the case of ***Des Raj and others,*** (2004) 7 SCC 753, hence, even on merits the review applications are liable to be rejected.

17. The Supreme Court in the case of ***M/s A.C. Estates v. M/s Serajuddin & Co. and another***, AIR 1966 SC 935 has held there cannot be review on the ground of discovery of new and important matter, for such matter has to be something which existed at the date of the order and there can be no review of an order which was right when made on the ground of the happening of some subsequent event. In the facts of the present case it is a subsequent award that forms the basis for filing the review application, which admittedly did not exist at the date of the order. At the time when the judgement and award was made it was right, hence, the petitioners were not aggrieved by it and did not challenge it. As held by the Supreme Court in the above referred decision there can be no review of an order which was right when it was made on the ground of some subsequent event. Moreover, we are informed by the learned Advocate for the respondent No.2 that appeals have also been filed against the judgment and award passed in LAR No.2/02 to 4/02 on 10th December, 2008, being FAST No.4331/08 to 4333/08, hence even the very order on which the review application is based has not attained finality.

18. In view of the above discussion, we do not find any infirmity in the order passed by the Reference Court in rejecting the petitioners' applications under section 5 of the Limitation Act.

The petitions being devoid of merit deserve to be dismissed and are accordingly dismissed.

[M.S.SHAH, J.]

[HARSHA DEVANI, J.]

parmar*