* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **R.S.A No. 15 of 2009**

% Date of Decision: 30th JUNE, 2015

DELHI DEVELOPMENT AUTHORITY ... Appellant

Through: Mr.Ajay Verma, Adv.

. versus

SHISH PAL & ORS. ..... Respondent

Through: Mr. R.K Dhawan, Ms. Richa Dhawan & Ms. Archana Chaudhary Advocates.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is a regular second appeal filed by the appellant against the judgment dated 07.04.2008 passed in RCA No.123/05. The first appellant court upheld the judgment/decree dated 01.04.2005 passed by the trial court by virtue of which the suit no. 0373/85 was decreed in favour of respondent/ plaintiff.
2. Briefly stated the facts of the case are that a suit for permanent injunction was filed by the respondent/plaintiff against the appellant/DDA claiming ownership of the suit property being property measuring 45' X 20' (2 Biswa) forming part of Khasra No. 1275 in the village Tughlakabad. It was alleged in the plaint

that on 29.04.1985 the DDA and its officials illegally started to demolish the suit property which was averted by timely intervention of the respectable person of locality. It was prayed in the aforesaid suit that the DDA and its officials be restrained from demolishing the suit property or in any way dispossessing or interfering with the possession of the respondent/plaintiff illegally and forcibly other than by due process of law.

3. The aforesaid stand of the respondent/plaintiff was vehemently contested by the appellant/DDA on the grounds that the suit land was an acquired land by virtue of Award No. 50-A, supplementary/ 1969-70 and the physical possession of the land was taken over on 28.05.1985 and thereafter vide notification dated 01.06.1985 the same was placed at the disposal of the DDA. Therefore the respondent/plaintiff had no title, right interest in the suit property. Further the maintainability of the suit was challenged before the trial court**.**

4. The learned trial court held that the defendants have failed to prove their case and that the respondent/plaintiff is in legal possession of the suit property passed a decree in favour of the respondent/ plaintiff vide order dated 01.04.2005. Subsequently DDA filed an appeal along with an application under S.5 of the Limitations Act 1963 with a prayer for condonation of delay of 127 days. Vide

order dated 07.04.2008 the ld. appellate court dismissed the application for condonation of delay while giving concurrent finding to the effect that the appellant/DDA had failed to prove that the physical possession of the suit property vested with it which is the pre requisite for a land to be an acquired land as per the Land Acquisition Act, 1894 and therefore the appeal was held bereft of any merit.

5. Relying on the judgement rendered in Commissioner, Bangalore Development Authority vs. Brijesh Reddy & Anr. (2013) 3 SCC 66 it is contested by the learned counsel for the appellant/DDA that the civil court has no jurisdiction to go into the issue of acquisition.

6. It is further contended that the courts below failed to appreciate that the Land Acquisition Act 1894 does not make any differentiation/classification in actual and symbolic possession. It is stated that all that S. 16 of the Act lays down is that when the possession is taken free from all encumbrances then the acquisition proceeding is complete. In support of the aforesaid the learned counsel for the respondent has relied on Tamil Nadu Housing Board vs. A Viswam, (1996) 8 SCC 259 and Nagin Chand Godha vs. UOI & Ors., 2003 (70) DRJ 721 (DB).

7. The learned counsel for the appellant has contended that the first appellate court and the trial court instead of putting the onus of

proving their case upon respondent/plaintiff, desired appellant/DDA to defend its case from first instance without respondent/plaintiff discharging its obligation to do so. In furtherance of the aforesaid submission it is averred that it is incorrect that no documents relating to possession were placed or proved before the court, as the Award-50 A (Ex-DW1/1), Notification dated 11.06.1985 (Ex-DW 1/2) and the possession report (Mark 'A') are a matter on record.

8. Relying on the findings rendered in Tamil Nadu Housing Board (supra) it is contented that the presumption under S. 114(e), Evidence Act, 1872 would attach to the official acts particularly relating to the issuance of the Notification dated 11.06.1985 under S. 22(1) of Delhi Development Act by virtue of the suit land was placed at the disposal of DDA after having been taken possession thereof.

9. The learned counsel for the appellant has contended that the suit was not maintainable in the first instance for non-joinder of the necessary party namely the UOI as it was UOI which had acquired the land. The said legal position stands approved by the apex court in para 10 of the aforesaid judgment of Tamil Nadu Housing Board (supra). It is further contended that same casts a cloud on the design of the respondent/plaintiff as the UOI (through land

acquisition collector) was the one in possession of all the relevant records as it was the acquiring authority and the one who had subsequently transferred possession to the DDA.

10. The learned counsel for the appellant has contended that it is settled law that a judgment/decree by a court lacking jurisdiction is a nullity and bad in the eyes of law. Reliance has been placed on the findings rendered by the apex court in Gaon Sabha vs, Nathi; (2004) 12 SCC 555

> 15).... Once we come to the legal position that the civil court had no jurisdiction to entertain the suit, the inevitable consequence is that the decree passed in the aforesaid suit including that of the High Court is wholly without jurisdiction. In such circumstances the principle laid down in Kiran Singh v. Chaman Paswan [1955]1SCR117 would come into play that **a decree passed by a court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings and further a defect of jurisdiction whether it is pecuniary or territorial or whether it is in respect of the subject matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties.** Therefore, the finding that the order passed under Section 7(2) of the Act vesting the property in the Gaon Sabha is illegal recorded in the civil suit (including that by the High Court in second appeal) has to be completely ignored.

11. The learned counsel for the appellant has urged that the appellate court fell into an error by holding that the appellant has failed to show any cause much less 'sufficient cause' for condonation of delay under S.5 of the Limitation Act, 1963 (the 'Act') in filing of the appeal. Reliance has been placed on the findings rendered in S. Ganesharaju vs. Narasamma 2012 (4) SCALE 152 wherein it has been held as under:

> "15. The expression "sufficient cause" as appearing in the S.5 of the Indian Limitation Act 1963 has to be given a liberal construction so as to advance substantial justice.
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> 16. Unless the respondents are able to show malafide in not approaching the court within the period of limitation generally as a normal rule the delay should be condoned. The trend of the courts while dealing with the matter with regard to condonation of delay has titled more towards condoning delay and directing the parties and contest the matter on merits meaning thereby that such technicalities have been give a go by.
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> 17. Rules of limitation are not meant to destroy or foreclose the rights of the parties they are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.
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> 18. We are aware of the fact that refusal to condone delay would result in foreclosing the suitor from putting forth his cause there is no presumption that delay in approaching the court is always deliberate.
>
> 19. In fact it is always just, fair and appropriate that matters should be heard on merits rather than shutting the doors of justice at the threshold since sufficient cause has not been defined thus the courts are left to

> exercise the discretion to come to the conclusion whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter...."

12. The learned counsel for the appellant/DDA relying on the aforesaid judgments has contended that the appellant/DDA has been able to show 'sufficient cause' for the delay. It is stated that it is trite law that public interest should not be allowed to suffer on account of fault of the counsel conducting the case or any negligence on the part of any official of the department. The approach of the court should be pragmatic and not pedantic.

13. It has been further stated that in any case the order dated 07.04.2006 suffers from perversity since the first appellate court decided the appeal by not condoning the delay yet commented on the merits of the case.

14. It is stated by the learned counsel for the appellant that the primary reason for delay in filing the present appeal was on account of the fact that the file had got mixed up with other files and by the time the file was retrieved the time for filing appeal was over. It is further contended that the public interest should not be allowed to suffer on account of any administrative act on the part of any

official of the department or for that matter the counsel as the approach of the court should be pragmatic, not pedantic.

15. The learned counsel for the appellant, relying on the judgment rendered in Anathula Sudhakar vs. P Buchi Reddy (Dead) by L.R's & Ors., (2008) 4 SCC 594 has contested that a suit for injunction simplicitor was not maintainable as there was a cloud on respondent/plaintiff's title. In view of the aforesaid it is stated that the first appellate court and the trial court failed to consider the fact that the plaintiff/respondent did not file any documents on record which established their ownership to the suit land particularly when DDA had challenged their title in respect thereof. Further it is stated that the trial court erred in giving a finding with respect to the ownership of the suit land in absence of any evidence in relation thereto especially when no issues pertaining to the same were framed.

16. On the other hand the respondent/plaintiff has contested that no award has been passed by the DDA with respect to the suit land as the same was built up. Further it is contested that, as has already been recorded concurrently by two courts below the DDA failed to prove original Aks-Shizra or place on record any possession proceedings to show actual possession was taken either by the government or by the DDA itself.

17. It has been averred by the learned counsel for the respondent/plaintiff that the possession of the property vests with the respondent. It is further averred that vide order dated 03.05.1985 interim injunction was granted in favour of the respondent and therefore on account of the same no possession whether physical or symbolic could have been taken by the DDA.

18. Relying on the judgment of the apex court in Balwant Narayan Bhagde vs. MD Bhagwat AIR 1975 SC 1767 and Prahlad Singh vs. Union of India (2011) 5 SCC 386, it is contested by the learned counsel for the respondent/plaintiff that taking over of actual possession of the land by the government is pre-requisite and mere symbolic transfer would not vest the title with the government.

19. It has been further contested by the learned counsel for the respondent/plaintiff that u/s 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013**,** land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made prior to five years or more of the commencement of the 2013 Act and possession of the land is not taken or compensation has not been paid. Reliance in this regard has been placed on Pune Municipal Corporation & Anr. Vs. Harakchand Misirmal Solanki & Anr.

(2014) 3 SCC 183, Union of India & ors. Vs. Shivraj & Ors. (2014) 6 SCC 564 and Shree Balaji Nagar Residential Association vs. State of Tamil Nadu & ors. 2014 (10) SCALE 388.

20. The learned counsel for the respondent/plaintiff has challenged the maintainability of the present regular second appeal in the light of enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013.

21. It is contested by the learned counsel for the respondent that as far as merits of the matter are concerned DW-1 has categorically admitted before the ld. ADJ that the documents placed on record by the DDA were not correct and the same is a matter of record.

22. It is the case of the respondent/ plaintiff that there is no cloud on the title as well as possession of the suit property and therefore there was no occasion for the respondent/plaintiff to file suit for declaration.

23. In rejoinder, it is the case of the appellant/DDA that the appellate court failed to consider that the trial court fell into an error by deciding the matter in the absence of a final and enforceable demarcation report and by ignoring the documents relied upon by the DDA and duly proved as per law which clearly established the factum that the suit property was a part of khasra No. 150. Further no findings with respect to the ownership of the property were

rendered by the trial court as it merely observed that the plaintiff was in clear possession of the suit property. It is further stated that the Union of India which is a necessary party was not impleaded and therefore the judgment was bad in law and the factum of which was not considered by the appellate court. So far as the applicability of the new Act is concerned it was contended that this being a regular second appeal and the land having been acquired under the land acquisition Act, therefore, the question of applicability of the said Act would not arise. For that purpose, the respondent need to file a separate writ petition in the High Court.

24. I have heard both the parties and gone through the record. The appellant has stated that the first appellate court erred in not considering the law in its proper perspective and thus the judgment of the trial court suffers from perversity and is bad in law.

25. The present second appeal is on the short point as to whether the appellate court was right in commenting on the merits of the matter when it had dismissed the application for condonation of delay.

26. It is pertinent here to mention that there was only a delay of 127 days in filing the first appeal. The reason attributed to the aforesaid delay is mainly due to the fact that the file was stated to have got mixed up with some other files of the Department. The learned counsel has noted the fact that certified copy of the judgment was

obtained timely but it did take them some time to obtain view of all concerned before appeal could be finalized, but the delay is attributed to the fact that the file got mixed up with some other files.

27. This has not been accepted to as the credible explanation constituting sufficient cause because no details of the Department are given nor are the details of the date given when the file was located. No doubt it would have been better to give those details but the question which arises for consideration is whether the absence of such details can be a ground per se to reject the explanation. I am not prepared to accept that because assuming for a moment the details are given, still a question can be posed as to the details of the file with which it was attached. There can be endless queries raised on the similar lines, but this is not the correct approach. The question to be seen is whether there is a doubt about the bona fides, if not, then the delay ought to be condoned. The fact that delay was of only 127 days shows that the appellant in its all sincerity wanted to pursue the appeal.

28. The power of the court to condone the delay is a discretionary power and is to be used to advance substantial justice and not to dismiss a matter at the very threshold on the basis of mere technicalities especially where a case involves questions of public

policy. It is also true and correct that the litigant does not stand to benefit by lodging an appeal late. The Honourable Supreme Court in Collector Land Acquisition (supra) has stated that:

> "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." It clearly flows from the aforesaid that not only is the court empowered court to by- pass technicalities in order to deliver justice but is also "duty bound" to do so.

29. The slow mobility of matters in government departments is almost proverbial. Government decisions unlike decisions made by private parties/individuals are slow and encumbered on account of procedural delays, and impersonal machinery as officers are never directly hit or hurt by the decisions made on behalf of the government. A bureaucratic organisation hesitates and debates, moves through massive amount of paperwork and procedures both horizontally and vertically to finally arrive at a conclusion which if, is not satisfactory the entire process is repeated again causing tremendous delay in all its workings. Even though the legislature has time and again made laws and given directions for timely completion of governmental task but due to the vastness of the governmental machinery and the intrinsic and complicated age old procedural systems the same has become a herculean task to

achieve. It is therefore unfair and unrealistic to put the government on the same footing as the private parties. This is more so with the larger situations where outside forces are constantly at work in order to cause delay in filing of the appeal or taking a timely decision because they stand to gain enormously because of this.

30. The words 'sufficient cause' under the Act have not been defined for the reason that the same are to be interpreted in the light of the facts and circumstances of each individual case as no blanket approach is possible. It seems the Ld. ADJ feel into an error by holding that the appellant/DDA had failed to show 'sufficient cause' warranting condonation of delay and thereby dismissing the same. It is settled principle and has been echoed in catena of judgments that the delay of each and every day cannot be expected to be explained by the litigant as was originally envisaged by Supreme Court in Ramlal, Motilal and Chhotelal vs.Rewa Coalfields Ltd; AIR 1962 SC 361. The latest trend followed by the court is that length of delay or quantum of delay is not important while deciding the application, what is important is the bona fides of a party in approaching the court.

31. As it falls from the aforesaid reasoning certain laxity has to be provided to the government as it is not made of a single individual but is a complex machinery. Further the interest of public at large

cannot be compromised for the delinquency on part of certain officials or the counsel or for that matter the counsel representing the party.

32. In State of Jharkhand vs. Krishna Pradhan & ors. (2010) 13 SCC 327 the Honourable Supreme court while allowing the application for condonation of delay has held as follows:

> "It appears that cases are coming up before this Court, and probably before the High Court's also, where appeals or writ petitions are filed after inordinate delay and an explanation is sought to be given in the application for condonation of delay in such cases filed by the government or the State Authorities that the file was moved from one desk to another or the approval was sought from the higher authority which took considerable time. We feel that the beneficiary of the judgment may be hand in glove with the officials in the Government Department who deal with the files, and files are suppressed for a long period, and then the appeal before the High Court or Supreme Court is filed after a long delay to get the appeal dismissed on the ground of delay. Huge amounts of public money or public property may be involved and the Government will be the loser on the technical point of limitation in such cases. This racket has been going on for a long time not only before the Supreme Court but also before the High Courts. Now the time has come that this racket should come to an end and the officials responsible for this be given severe punishment."

33. In the light of the aforesaid, I am of the considered opinion that the learned appellate court has grossly erred by rejecting the appeal on mere technicalities by wrongly appreciating facts which no reasonable person would have done.

34. Further, the Ld. ADJ while dismissing the application for condonation of delay went ahead and commented on the merits of the matter. It was observed in the impugned judgment that the appeal was bereft of any substance in the light of the fact that the DDA had failed to take actual/physical possession of the suit land.

35. Keeping in view the reasoning given above, it is pertinent to note that once the application for condonation of delay was dismissed the appellate court became *functus officio* thereby it ought not have commented on the merits of the matter *suo moto* which has technically resulted in all doors being closed on the litigant to have his case re-assessed atleast once on the merits.

36. Therefore on the basis of the aforesaid reasoning I am of the considered opinion that the delay in filing the appeal ought to be condoned in order to advance substantial justice as the quantum of delay in filing the appeal was not huge. Further, the learned Judge after having rejected the application for condonation ought not to have gone into the merits of the matter.

37. Accordingly the appeal is allowed and the matter is remanded back to the trial court with a direction to the district judge to assign the matter to a different ADJ other than the one who had passed impugned order so that the matter may be considered from a fresh perspective, who shall decide the same on merits after treating the

application for condonation of delay as deemed to have been allowed.

38. The parties are directed to appear before the learned District & Sessions Judge, South East District, Saket Courts, New Delhi on 20.07.2015.

V.K. SHALI, J

JUNE 30, 2015/AD