

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

TUESDAY, THE 5TH DAY OF JANUARY 2016/15TH POUSHA, 1937

LA.App..No. 466 of 2015 ()

(AGAINST THE ORDER/JUDGMENT IN LAR 434/2006 of III ADDL.SUB COURT,
ERNAKULAM DATED 17-09-2010)

APPELLANT/CLAIMANT:

THOMAS @ TOMY PETER, AGED 67 YEARS
S/O. PETER, ANTHIKKAT, PETRIS BUILDING
KADAVANTHRA, KOCHI 20, ELAMKULAM VILLAGE
KANAYANNUR TALUK

BY ADVS.SRI.K.C.CHARLES
SRI.M.POLY MATHAI
SRI.VIMAL K.CHARLES

RESPONDENT (S) /RESPONDENTS:

1. SPECIAL TAHSILDAR (L.A)
CORPORATION OF KOCHI, VYTILA, KOCHI

2. SECRETARY
CORPORATION OF KOCHI, ERNAKULAM

R2 BY ADV. SRI.E.D.GEORGE,SC,COCHIN CORPORATION
R1 BY GOVERNMENT PLEADER MR. R. PADMARAJ.

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON
05-01-2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
ANIL K. NARENDRA, JJ.**

**C.M. APPLICATION No.483 OF 2015
&
L.A.A.No.466 OF 2015**

Dated this the 5th January, 2016

JUDGMENT

P.R. Ramachandra Menon, J.

This appeal arises from the judgment and decree dated 17.09.2010 passed by the III Addl. Sub Court, Ernakulam in LAR No.434 of 2006. The appeal admittedly is belated by more than 4 years and the delay of 1659 days is sought to be condoned by filing C.M.Application No. 483 of 2015. The prayer to condone the delay is vehemently opposed from the part of the respondent State by filing a counter affidavit.

2. We heard both the sides. Before proceeding with the merit pointed out with regard to condonation of delay and also as to the merit of the case involved, gist of the factual matrix is to be referred to.

3. The acquisition was for widening of the Sahodaran Ayyappan Road. Pursuant to the notification dated 13.10.2014

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under Section 4(1) of the Land Acquisition Act, the property was taken possession on 07.08.2006 and an award was passed on 05.08.2006, whereby the Land Acquisition Officer fixed the land value at Rs.617250/- per Are. The land value was sought to be enhanced in LA.Appeal No.2302 of 2008. The contention raised was that higher land value was fixed by this Court in respect of the property involved in L.A.R.No.445 of 2006, which was stated as situated adjacent to the property involved herein. In the said case, the land value was fixed by this Court as Rs.10,15,326/- per Are. It was contended that the appellant (who was the appellant in L.A.A.No.2302 of 2008) was entitled to have the benefit of the said judgment and the same land value. After hearing both the sides, the Bench passed a common judgment in the aforesaid appeal along with the connected cases, holding that, if the land value fixed by this Court in the concerned appeal in respect of LA.R. No.445 of 2006 had already become final, re-fixation had to be done by the Reference Court with reference to the land value passed based on that judgment. It was accordingly, that the valuation effected in respect of the

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structures was upheld and the matter was remanded, permitting the appellant to rely on L.A.R.No.445 of 2006. It was specifically made clear by this Court in the aforesaid judgment (copy of which has been placed for consideration by the learned Counsel for the appellant himself) that, once it was ensured that the above judgment had become final, re-fixation shall be done determining the market value relying on that judgment. It was accordingly, that the matter was reconsidered by the Reference Court, passing judgment and decree on 17.09.2010, whereby a positive finding was rendered based on further evidence adduced as referred to in paragraph 7 of the verdict, holding that the judgment passed by this Court in respect of L.A.R.No. 445 of 2006 had already become final and that by virtue of close proximity to the land in question, the appellant was also entitled to have similar treatment. It was accordingly that the land value, (which was originally fixed by the Land Acquisition Officer as Rs.617250/- and enhanced by the Reference Court only to an extent of Rs.833300/- per Are) was enhanced and re-fixed as Rs.1015326/- per Are, also granting all statutory benefits flowing

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therefrom. There was no grievance from any corner in this regard, as grounds of challenge raised in the earlier round of litigation by way of L.A.A.No.2302 of 2008 were fully satisfied.

4. The heart-burn of the appellant started years later. The contention now projected in the present appeal is that, in respect of another property, forming the subject matter of LAR No.425 of 2006, situated nearby, enhancement was made by this Court based on valuation of a document bearing No.452/02 of SRO, Ernakulam and accordingly, the same was granted as per Annexure-I judgment dated 10.06.2015 in LAA.No.149 of 2015. The case of the appellant now putforth is that the property belonging to the appellant is having more proximity to the Kadavanthra Junction, than the property involved in LA.A.No.149 of 2015 and as such, the same market value should have been given to the present appellant as well. Admittedly, there is a delay of 1659 days in filing the appeal and hence the same is sought to be condoned by filing an application as mentioned already.

5. The learned Counsel for the appellant points out that,

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mainly two grounds have been raised in the affidavit in support of the application to condone the delay. One is that the appellant could not trace out the relevant documents showing the actual market value of the land (Ext.A7) in LAR No.425 of 2006 considered by this Court in LAA No.149 of 2015. The other ground is that there were financial constraints in so far as the appellant was concerned as he had to conduct the marriage of his daughter and that of his son in the meanwhile. The affidavit also states that he came across existence of such a document and the enhancement awarded by this Court only through a news item reported in the Mathrubhumi daily dated 17.07.2015. The prayer is vehemently opposed by the first respondent by filing a counter affidavit stating that then delay has not been properly explained and that the so called explanation is not at all satisfactory; also adding that the attempt is only an experimental exercise.

6. During the course of hearing, the learned counsel for the appellant placed reliance on two judgments of the Supreme Court; one reported in **Imrat Lal and others vs. Land**

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Acquisition Collector and others [2014) 14 SCC 133] and the subsequent one reported in **Dhiraj Singh (Dead) through legal representatives and others vs. State of Haryana and others** [2014)14 SCC 127] and submitted that while considering matters involving delay, a pragmatic approach has to be taken by the Court. It is also pointed out that in the former case, the delay of 1110 days was condoned by the Apex Court; whereas coming to the latter case, the delay was of several years.

7. The learned Sr. Government Pleader appearing for the respondent submits that the decisions cited across the Bar are not applicable to the case in hand and that the so called explanation is not at all liable to be entertained, as it is not proper reason at all.

8. As mentioned already, the explanation offered is that the appellant could not trace out the document (Ext.A7) and as to his financial constraints. If at all the appellant was not having proper means, appropriate proceedings could have been filed before this Court by way of indigent proceedings, if the same is sustainable on the actual facts and figures. With regard to the

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other explanation offered that the party could not trace out the document, we find it difficult to accept the same, for the admitted fact that no attempt was made to procure the relevant documents, as the party himself has conceded in the affidavit dated 30.07.2015 that he came across existence of the documents and the verdict passed by this Court only on the basis of a newspaper report appeared in the Mathrubhumi daily. The delay is inordinate and the same cannot be simply condoned even by denying interest for the period covered by the delay in view of the ruling rendered by the Supreme Court in the decision reported in **AIR 2014 SC 746 (Basawaraj and another vs. The Spl. Land Acquisition Officer)**.

9. Coming to the scope of applicability of the decisions cited by the learned Counsel for the appellant, it is to be seen that the factual position considered by the Supreme Court in the former decision was in respect of the particular circumstances as to the plight of the villagers in India who are largely illiterate and not conversant with the intricacies of law and other attendant circumstances. In paragraph 10 of the judgment, the Apex

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Court specifically noted that the Court agreed with the submission made by the learned Counsel for the respondents that the averments contained in the application for condonation of delay were extremely vague and did not provide satisfactory explanation for the long delay of 1110 days. The dismissal of the application by the learned Single Judge was intercepted in the particular circumstances as explained in paragraph 11, observing that if the affidavit was vague and no proper explanation was there, considering the nature of the claimants involved therein, the court could have adopted a liberal approach either by granting time to file a better affidavit to explain the delay or suo motu taking cognizance of the fact that large number of other similarly situated persons who were affected by the determination of compensation by the Land Acquisition Officer or the Reference Court, have been granted relief. The said decision does not support the case of the appellant herein in any manner.

10. Coming to the latter decision, of course, a reference is made to the former decision in the said case. The reliance

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sought to be placed by the appellant is with reference to the observation in paragraph 16 as to the liberal approach to be made in matters involving condonation of delay. Here again, the factual position stands entirely on a different pedestal as the property acquired therein was from agriculturists and the specific observation was made in paragraph 11 that in matters of land acquisition where land of peasants is acquired, a different approach has to be taken. Similarly, a further observation was made in paragraph 13 that in almost all cases, the rate of enhancement was given at the stipulated rate by the High Court and also by the Apex Court; simultaneously observing that the parties concerned therein had already preferred an appeal, but since they lost the case, they could not file LPAs before the Division Bench for want of necessary finance. It was in the said circumstance, referring to the nature of the land involved, the nature of the parties concerned and the particular circumstance that interference was made, which cannot be pressed into service in so far as the present appellant is concerned ; more so when no such case as similar to the circumstances dealt with by the Apex

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Court with regard to the status of the parties is involved in the present case .

11. Another important aspect to be noted is that the present grievance as projected by the appellant herein, is a new case with reference to the judgment in L.A.A.No.2302 of 2008 and the documents referred to therein. Absolutely no such case was ever there for the appellant in the earlier round of litigation, when the land value fixed by the Acquisition Officer as Rs.6,17,250/- came to be enhanced by the Reference Court only to an extent of Rs.8,33,300/-, which in turn was sought to be enhanced by way of appeal filed before this Court. The specific case projected in LAA No.2308 of 2008 was that the land value was actually re-fixed by this Court to an extent of Rs.10,15,376/- with reference to LAR No.445 of 2006 and that the said fixation had already become final, which benefit was sought to be extended to the appellant as well. It was accordingly that the concerned appeal was remanded for re-considering the issue with reference to applicability of said judgment. The observation made by this Court in paragraph 1 of the said judgment is extracted

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below for convenience of reference.

" It appears to us that the appellant is voicing a genuine grievance that his property situated on the side of the Sahodharan Ayyappan road was acquired for the widening of that road. The acquisition was pursuant to notification published on 13/10/2004. The Land Acquisition Officer awarded land value at the rate of Rs.6,17,250/- per Are. Reference Court, on the basis of the evidence that was adduced by the claimant, re-fixed the land value at Rs.8,33,300/- per Are. He was awarded structure value also. This appeal is confined to the appellant's claim for enhanced land value. Advocate Sri K.C.Charles, learned counsel for the appellant, placed strong reliance on the judgment dated 28/02/2009 in L.A.R.No.445/2006 which according to Mr.K.C.Charles pertains to the property adjacent to the property under acquisition in this case on its eastern side. It is submitted that under the judgment in L.A.R.No.445/2006, the court re-fixed the land value at Rs.10,15,376/- for the acquired land. The registry reports that no appeal is preferred against L.A.R.No.445/2006. But, learned Government Pleader submits that it is

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likely that an appeal proposal may be sent to the Advocate General's office in future. Whatever that be, we feel that the judgment in L.A.R.No.445/2006 can have evidentiary value for determining the market value in the present case. We are therefore inclined to accept the appellant's plea for a remand. Accordingly, we set aside the judgment and remand L.A.R.No.445/2006 for re-determining the market value of the land. We confirm the enhancement awarded by the court towards value of structures. The court below will permit the appellant to rely on L.A.R.No.445/2006. Once it is ensured that the above judgment has become final, re-fixation will be done determining the market value relying on that judgment."

12. From the above, it is quite evident that the remand made by this Court was only to the limited extent to ascertain whether the appellant was entitled to have the benefit of the judgment in L.A.R.No.445 of 2006 and if the verdict had already become final, to extend similar benefit to the appellant to the said extent. Pursuant to the said remand , admittedly the matter was considered by the Reference Court based on the fresh

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evidence adduced and the entire benefit as given in L.A.R.No.445 of 2006 was extended to the appellant. It is also relevant to note that the appellant had opportunity to adduce fresh evidence and still the document now sought to be pressed into service was never produced before the court below, nor any relief was claimed with reference to that document. That apart, the enhancement awarded by this Court in Annexure A1 judgment (LAA No.149 of 2015) was based on the factual particulars in the said case, where the party had sought to appoint an Advocate Commissioner. An Advocate Commissioner was appointed; a report was made with reference to the property under acquisition and also the property which was sought to be relied on with reference to the market value; a sketch was also produced and it was accordingly, that the land value was re-fixed as Rs.16,97,687/- in the said case, which cannot be pressed into service by the appellant, who had not pursued any such course.

13. During the course of hearing, the learned Counsel for the appellant had made a submission that there was inordinate delay in filing LAA No.149 of 2015 as well and that the same was

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condoned; and in the said circumstances, the benefit cannot be denied to the appellant. Based on the said submission, we called for the 'judges' papers' and we have perused the same. On going through the proceedings, it is seen that the verdict passed by the concerned Reference Court was sought to be challenged by filing appeal dated 02.12.2015. It is seen that there was no delay at all on the part of the appellant/claimant in approaching this Court. Subsequently, some defects were noted by this Court, which was sought to be cured, wherein some delay was there, which was sought to be condoned by filing an application, which was allowed on 16.03.2015. The proceedings cannot be equated to the case of the appellant herein, who was simply sleeping over his rights and sitting on arm chair, in view of the law declared by the Apex Court in **AIR 1970 SC 470 (Rabindra Nath vs. Union of India)**. This is in addition to the fact that the present case as now put forth in the appeal is a totally new one, which was never there at any point of time in the earlier round of litigation; more so, in view of the limited extent of remand ordered by this Court as per judgment dated 03.06.2010

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(in LAA No.2302 of 2008). We find that the reasons offered by the appellant in the petition to condone the delay are not satisfactory at all, apart from the fact that there is no merit at all.

In the above circumstance, interference is declined and we dismiss both the petition to condone the delay and the appeal as well.

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JUDGE**

**ANIL K. NARENDRA,
JUDGE**

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