

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 4TH DAY OF SEPTEMBER 2003

BEFORE

THE HON'BLE MR.JUSTICE H.L. DATTU

CIVIL REVISION PETITION NO 1515/2002.

BETWEEN :

ASSISTANT COMMISSIONER
& LAND ACQUISITION OFFICER,
HARAPANAHALLI

... PETITIONER

(By Sri.B. PALAKSHIAH, HOGP)

AND :

- 1 HANUMAPPA
R/OF MUDLA MACHIKERE
VILLAGE JAGLUR TQ
- 2 UPPARA MALLAPPA
R/OF MUDLA MACHIKERE
VILLAGE JAGLUR TQ
SINCE DECEASED BY LRS
- 2A PAKKERAMMA
D/O. UPPARA MALLAMMA
AGED 50 YEARS
R/O MUDLA MACHIKERE
VILLAGE, JAGLUR TQ.
- 3 UPPARA MURUDAPPA
R/OF MUDLA MACHIKERE

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VILLAGE JAGLUR TQ
SINCE DECEASED BY LTS

3A CHANDRAPPA
S/O. MURUDAPPA
AGED 35 YEARS
R/OF MUDLA MACHIKERE
VILLAGE JAGLUR TQ

4 UPPARA HULIYAPPA
R/OF MUDLA MACHIKERE
VILLAGE JAGLUR TQ
SINCE DECEASED BY LRS

4A GANGAMMA
W/O. HULIYAPPA
AGED 40 YEARS
R/OF MUDLA MACHIKERE
VILLAGE JAGLUR TQ

5 HALLIKERE KARIYAPPA
R/OF MUDLA MACHIKERE
VILLAGE JAGLUR TQ

6 HALLIKERE KARIYAPPA
R/OF MUDLA MACHIKERE
VILLAGE JAGLUR TQ.

... RESPONDENTS

(By Sri. C SHIVA KUMAR, ADV.)

THIS CRP IS FILED U/S.115 CPC AGAINST THE ORDER DATED 3.11.2001 PASSED ON IA NO.1 IN U.R. MIS.NO.5/98 ON THE FILE OF THE CIVIL JUDGE (SR.DN.), DAVANGERE, ALLOWING IA NO.1 FILED U/S.5 OF THE LIMITATION ACT SEEKING CONDONATION OF DELAY, ETC.

THIS CRP COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

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ORDER

The Assistant Commissioner and Land Acquisition Officer, who is arrayed as respondent before the trial Court, is before this Court in this petition filed under Sec.115 of Code of Civil Procedure, interalia calling in question the order made by the trial Court on I.A.No.I in U.R.Mis.No.5/1998 dated 3.11.2001. By the said order, the learned trial Judge has allowed the application filed by the review petitioners for condonation of delay in filing the review petition.

2. Brief facts are:

Review Petitioners before the trial Court were the owners of certain extent of lands situate in and around Davangere and Chitradurga District. Their lands came to be acquired by the State Government. The Land Acquisition Officer had passed an award. Thereafter, a reference came to be made before the trial Court as provided under Sec.18 of the Land Acquisition Act, 1984. The trial Court by its judgment and decree dated 21.10.1982 had

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enhanced the compensation payable to the land owners and also had granted solatium on the compensation amount at the rate of 15% and interest at the rate of 5% per annum.

3. It is stated on oath, that immediately after the judgment and decree passed by the trial Court, the review petitioners had filed an application under Secs.151 and 152 of the Code of Civil Procedure for amendment of the judgment and decree. That application came to be rejected by the trial Court. Aggrieved by the said order, it appears, review petitioners had filed another application in Misc.No.151/92, which was also dismissed by the trial Court on 3.9.1997. Aggrieved by that order, review petitioners were before this Court in Civil Revision Petition No.56/1998 and the same came to be rejected by this Court on 15.4.1998. Thereafter, review petitioners have filed the present review petitions before the trial Court under Order 47 Rule 1 of the Code of Civil Procedure with a request to review the judgment and decree made in LAC No.66/1980 dated 21.10.1982 on the ground that they are entitled for additional benefits under the amended

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provisions of Sec.23(1) and Sec.34 of Land Acquisition Act, 1984. Since there was delay in filing the review petition, the review petitioners have also filed an application under Sec.5 of the Limitation Act for condonation of delay in filing the review petition.

4. The trial Court had issued notice to the Assistant Commissioner and Land Acquisition Officer - petitioner herein both on the review petition and also on the application filed for condonation of delay. Parties were heard on the application filed for condonation of delay in filing the review petition by the trial Court. The trial Court by its cryptic order dated 3.11.2001 has allowed the application and has condoned the delay in filing the review petition. Aggrieved by the said order, petitioner - Land Acquisition Officer is before this Court in this petition filed under Sec.115 of Code of Civil Procedure.

5. Sri Palakshaiah, learned High Court Govt. Pleader appearing for the petitioner, would submit, that the learned trial

Judge is not justified in allowing the application filed by the review petitioners for condoning the delay of sixteen (16) years in filing the review petition without assigning any reasons whatsoever. Therefore requests this Court to exercise its jurisdiction under Sec.115 of the Code of Civil Procedure and annul the order made by the learned trial Judge dated 3.11.2001.

6. Sri Shivakumar, learned Counsel appearing for the respondents - land owners would submit that the learned trial Judge is justified in allowing the application filed for condonation of delay in view of certain observations made by a learned Single Judge of this Court in the case of *THE SPECIAL LAND ACQUISITION OFFICER, HIDKAL DAM PROJECT, HIDKAL & OTHERS VS. DODARAM AJJAPPA NAIK, SINCE DECEASED BY HIS L.Rs. AND OTHERS* reported in ILR 1997 KAR 3405.

7. That was a case where an application had been filed before the trial Court under Sec.151 read with Sec.152 of the Code of Civil Procedure to amend the judgment and decree passed by the

Reference Court. The Reference Court had rejected the application. Aggrieved by that, petitioners therein were before this Court.

This Court though came to the conclusion that such an application could not have been made for amendment of the judgment and decree, it has made certain observations and in my opinion, those observations would assist the respondents herein. The Court has observed that though an application for an amendment of the decree could not have been filed, nothing prevents the land owners from filing the review petition, to review the judgment and decree and to grant the benefit of the amended provisions of the Land Acquisition Act, 1984. The observations made by this Court is as under:

"16. There is no specific reference to the powers of the reference Court under the provisions of Order 47(1) CPC. Order 47(1) CPC provides for an application for review of judgment. "Any person considering himself aggrieved-

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a) *by a decision on a reference from a Court of Small Causes, from which no appeal has been preferred,*

b) *by a decree or order from which no appeal is allowed, or*

c) *by a decision on a reference from a Court of Small Causes,*

and who, from the discovery of new and important matter of evidence which after, the exercise of the due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

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Two things which I would like to point out from the case of Bai Shakriben is that initially that was a case where award or reference was not pending as on the date of the coming into the force of the Amendment Act. Secondly, the claimants had exhausted the appellate remedy and an application for amendment of the decree was made at the time of the execution of the decree. It was under these circumstances, the Supreme Court has specifically observed that such application could not have been granted by the High Court. In my considered opinion, there is no bar under the special circumstances narrated supra to make an application for the review of the order.

17. The other aspect, which I would like to mention in this case, concerns the conduct of the Government in such cases. When the parliament thought of conferring certain benefits to the losers of the lands for public purpose, whether

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the Government can put forth an obstacle by raising technical objections in the Courts of law? It must be remembered that laws are made for the benefit of the Society and not to create obstacles in that process. If there is any obstacle in that process, Courts will have to necessarily remove those obstacles. It is not known as to how the attention of the State Government was not at all drawn to this important aspect of the matter. The object of construction of major irrigation projects in the country or the State is for the benefit of large number of people though at the cost of few others. The benefit must necessarily be shared both by the subsequent beneficiaries and also by the losers of the land. Therefore, it is necessary for the Government to bestow its attention in this direction and to consider the entire thing afresh and the Court would in fact, go to the extent of advising the Government to take a very helpful decision in this matter."

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8. In view of the observations made by this Court, the learned trial Judge while condoning the delay in filing the review petition has only stated that there is satisfactory explanation by the land owners in approaching the Reference Court to review its order nearly after sixteen (16) years. In my opinion, the learned trial Judge could have adverted to the reasons assigned by the review petitioners in their applications for condoning the delay and thereafter could have come to the conclusion that the explanation offered by the review petitioners is satisfactory. But he has only stated that there are sufficient grounds to condone the delay in filing the review petition. In my opinion, it can only be said, that the learned trial Judge could have dealt with the application in a better manner. But that does not mean that the learned trial Judge has committed such a grave error in entertaining the application and condoning the delay in filing the review petition. Therefore though I am of the view that the learned trial Judge has not passed a detailed order on the application filed by the land owners for condonation of delay in filing the review petition, in view of the

observations made by this Court in the case of *THE SPECIAL LAND ACQUISITION OFFICER, HIDKAL DAM PROJECT, HIDKAL & OTHERS VS. DODARAM AJJAPPA NAIK, SINCE DECEASED BY HIS L.Rs. AND OTHERS* reported in ILR 1997 KAR 3405, the learned trial Judge is justified in allowing the application and condoning the delay in filing the review petition nearly after sixteen (16) years. In that view of the matter, interference with the order made by the learned trial Judge on the application filed for condonation of delay in U.R.Mis.No.5/1998 dated 3.11.2001 is not called for.

9. Accordingly, the following:

ORDER

- I. Civil Revision Petition is rejected.
- II. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.

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Sd/ 
Judge