

sas

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**CIVIL APPLICATION NO.1359 OF 2015
IN
FIRST APPEAL (ST) NO.8907 OF 2015
WITH
CIVIL APPLICATION NO.1360 OF 2015**

The Executive Engineer,
Nandur Madhmeshwar Project Division

..Applicant.

V/s.

Niwrutti Gopal Gaikwad and Anr.

..Respondents.

**WITH
CIVIL APPLICATION NO.1433 OF 2015
IN
FIRST APPEAL (ST) NO.8827 OF 2015
WITH
CIVIL APPLICATION NO.1434 OF 2015**

The Executive Engineer,
Nandur Madhmeshwar Project Division

..Applicant.

V/s.

Ratnakar Niwrutti Gaikwad and Ors.

..Respondents.

Mr.Abhijeet A.Joshi for the applicant.

Mr.Prashant Daulatrao Patil for respondent No.1.

Mr.A.R.Patel, AGP for respondent No.2.

**CORAM : A.S.OKA AND
V.L.ACHLIYA, JJ.**

DATED : 31ST AUGUST, 2015

P.C. :-

1. We have heard the learned counsel appearing for the applicant and the learned counsel appearing for the respondents. These are the applications for condonation of delay in preferring appeals against the judgment and award dated 27th May, 2011 passed by learned District Judge-2, Nashik in Land Acquisition

Reference Nos.138 and 139 of 2003. The delay is of 3 years and 198 days. As the explanation in the Civil Application to such a long delay was not at all satisfactory, a liberty was granted by this Court to the applicant to file additional affidavit for explaining the delay.

2. Accordingly, an additional affidavit has been filed by Shri Raghunath Sudam Patil, the Executive Engineer of Nandur Madhmeshwar Project Division, Nashik. In the additional affidavit, it is contended that on 13th October, 2011 the District Government Pleader, Nashik informed the Remembrancer of Legal Affairs of Law and Judiciary Department, State of Maharashtra about the impugned judgment and award and the State Government was informed that the decision about the preferring an appeal will have to be taken by the acquiring body (i.e. the applicant). By a letter dated 20th October, 2012, the Deputy Collector (Land Acquisition), Nashik called upon the applicant to submit his opinion as regards the filing of the appeal against the impugned award. By the letter dated 29th October, 2012, the Executive Engineer was informed about the letter received from the Deputy Collector. On 7th March, 2013, the Deputy Collector (Land Acquisition), Nashik provided a chart of the additional compensation payable in terms of the impugned judgment and award. Reliance is placed on the opinion dated 20th July, 2013 of Shri C.R.Aware, Advocate, who opined that the appeal deserves to be filed against the impugned judgment

and award. On 25th July, 2013 the Deputy Executive Engineer of the Nandur Madhemeshwar Project informed the Superintending Engineer and Administrator about the said opinion and the file was forwarded to the legal advisor of the Godavari Marathwada Patbandare Vikas Manhamandal, Aurangabad. In the meanwhile, by letter dated 19th September, 2013, State of Maharashtra through Law and Judiciary Department informed the District Collector that the opinion of the Law and Judiciary Department is not relevant and that it is for the acquiring body to take a decision. Reliance is placed on a further correspondence in the form of the letter dated 11th December, 2013 addressed by the Deputy Superintending Engineer of the said Mahamandal to the Godavari Marathwada Irrigation Corporation, wherein it is stated that the Advocate for the applicant has been appointed to prefer an appeal before the Aurangabad Bench of this Court. It is disclosed from the additional affidavit that there was a delay in forwarding the file to the Advocate and the file was eventually forwarded on 25th November, 2014. As per the advice of the Advocate for the applicant, the application for obtaining the certified copies of the impugned judgment and award was made on 4th February, 2015 and the same were received on 12th February, 2015. After making the payment of Court fees, the present appeals were lodged on 27th March, 2015.

3. The learned counsel appearing for the applicant urged

that the delay has been adequately explained. He also invited the attention of the Court to the impugned Judgment and Award and urged that the compensation determined by the impugned award is exorbitant. On instructions he stated that the applicant is ready and willing to pay the costs to the respondents-claimants.

4. The learned counsel appearing for the respondent-claimants has strongly opposed these applications by relying upon the reply, additional reply as well as second additional reply which has been tendered across the bar today. He pointed out that the acquiring body was all along aware of the impugned award. He urged that the cause title of the impugned judgment shows that the acquiring body was represented by Mr.R.P.Pagar, Advocate. He invited our attention to the Execution Application and various orders passed by the Executing Court in the said application. He pointed out that in fact Mr.C.R.Aware, Advocate caused his appearance on behalf of the applicant on 23rd April, 2012 in the execution application. He pointed out that thereafter, several orders were passed in the execution application. He submitted that even after taking a decision of preferring the appeals, which was communicated by letter dated 11th December, 2013. there was delay of one year in handing over the papers to the Advocate appointed to prefer appeals.

5. Inviting our attention to the additional affidavit filed by the applicant and in particular the letter dated 20th July, 2013 annexed to it, he urged that some portions of the said letter which are in a preconceived format have been struck out only with a view to misrepresent to the higher authorities that Shri C.R.Aware, Advocate was the District Government Pleader. He pointed out the letters dated 13th August, 2013 as well as 25th July, 2013 addressed by the officers of the said State Government in which Shri C.R. Aware is described as a Government Pleader. The learned counsel appearing for the first respondent urged that the Deputy Executive Engineer has played a fraud and has misrepresented that Shri C.R.Aware is the Government Pleader. He submitted that in case of many other awards, the acquiring body has not preferred appeals. Only with a view to obtain sanction of the higher authorities for preferring the appeals, it was misrepresented that said Shri C.R.Aware is a Government Pleader.

6. We have carefully considered the submissions and perused the affidavits on record. The Apex Court has repeatedly held that a liberal and justice oriented approach is required to be adopted while dealing the applications under Section 5 of the Limitation Act, 1963.

7. We have perused the impugned Judgment and Award by

which the two Land Acquisition References under Section 18 of the Land Acquisition Act, 1894 made at the instance of the respondent were disposed of. The enhancement has been granted on the basis of the valuation of fruit bearing trees on the acquired lands. In one case, the valuation of the plantations is made at Rs.74,33,404/- and in the other case, it is made Rs.22,44,597/-. Prima facie, it appears to us that the enhancement has been granted by the Reference Court only by relying upon the opinion of valuer. Prima facie, the compensation granted is excessive. The position of law is well settled. An Award made in a reference under Section 18 of the said Act, 1894 is relevant for determination of the market value of a comparable acquired land. Moreover, an application under sub section (1) of section 28A of the said Act, 1894 is maintainable on the basis of an Award under section 18 for re-determination of compensation of the other acquired lands notified by the same notification under section 4(1).

8. It is true that there is a long delay in preferring the appeals. The occasion for delay arises only when there is a default on the part of the applicant. It is true that in the correspondence made by the Deputy Superintending Engineer, Mr.C.R.Aware is described as a Government Pleader. Today, the learned counsel appearing for the applicants has tendered across the bar the opinion of Mr.C.R.Aware dated 20th July, 2013. By recording reasons,

he has come to the conclusion that it is necessary to prefer appeals. It is true that in the covering letter of the Sub Divisional Engineer, Shri Aware was described as a Government Pleader. The letter of Mr.Aware does not show that he claimed to be a Government Pleader.

9. As far as the submission of the respondent based on the forwarding letter dated 20th July, 2013 is concerned, it appears that the said letter is in a preconceived format and the particulars such as Land Acquisition Reference number, names of the parties, the details of the acquisition have been filled in by hand. The portions which are not applicable have been struck out. We do not see as to how this letter amounts to mis-representation.

10. It is true that the process of preferring an appeal commenced after the execution application was filed. It is also true that after taking a decision to prefer appeals in November, 2013, there was a further delay of more than 11 months.

11. There is one more aspect which needs to be considered. Though there was ad-interim relief granted by this Court on 16th April, 2015, the additional affidavit tendered today shows that the compensation amount has been already withdrawn by the respondents / claimants. This issue of withdrawal will have to be

gone into at the time of admission of the appeals, provided the order regarding payment of costs which we propose to pass is complied with by the applicant.

12. Considering the nature of the impugned awards, by taking a justice oriented and liberal approach, the delay deserves to be condoned subject to payment of costs. The respondents will have to be compensated by ordering the applicant to pay exemplary costs. Accordingly, we quantified the cost amount in each application at Rs.50,000/-.

13. Hence, we pass the following order :-

- (i) Rule is made absolute in terms of prayer clause (a) in both the applications subject to the applicant paying costs of Rs.50,000/- to the respondents in each application within a period of one month from today. Payment of cost will be a condition precedent.
- (ii) We direct Registrar, Judicial-I to call for a report from the Executing Court as to how permission was granted to the respondents to withdraw the compensation amount notwithstanding ad-interim stay granted by this Court. The report shall be submitted in 6 weeks from today.

(V.L.ACHLIYA, J.)

(A.S.OKA. J.)

C E R T I F I C A T E

Certified that this Judgment / Order uploaded is a true
and correct copy of original signed Judgment / Order.