

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Civil Application F No. 386 of 2015

in

First Appeal St. No. 21924 of 2014

The State of Mah.through Colecltor, Gondia and others.

-Vrs.-

Jai Bambleshwari Rice Mill through Proprietor and Owner Shri Prakash
Ramdeo Jaiswal

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mrs. Hiwase, learned AGP for appellants.
Shri Mehta, learned counsel for respondent sole.

CORAM : B.P. DHARMADHIKARI AND
P.N. DESHMUKH, JJ.

DATED : 17th AUGUST, 2015

Prayer by State Government is to condone delay of 149 days in filing appeal under Section 54 of the Land Acquisition Act against the judgment and order dated 3.3.2014 in Land Acquisition Case No.5/2012 delivered by Civil Judge, Senior Division, Gondia.

Learned AGP has relied upon the application under Section 5 of the Limitation Act to support the prayer.

Learned counsel Shri Mehta appearing for respondent/decreed holder points out that application does not give any explanation for the period for which delay needs to be explained. He therefore, prays for rejection of the application. According to him, in application under Section 18 of the Land

Acquisition Act, respondents/landowners had sought total compensation of Rs.61,00,000/- and the Court below awarded only Rs.12,00,000/-. Their appeals filed for further enhancement are admitted by this court. However, if the delay is now condoned just for asking, the right to receive that amount of compensation granted by the lower Court (of Rs. 12,00000/-) would be diluted.

Learned AGP has produced before the Court order dated 18.4.2015 passed in CAF No. 464/2015 in First Appeal St. No. 21967/2014. She points out that against very same adjudication the same delay of 149 days has been condoned by this Court after noticing that the appeal filed by landlord for enhancement as F.A.No. 507/2014 has been admitted by this Court in March, 2015. She submits that there also the appeal filed by respondent/landlord for enhancement has been admitted on 5.11.2014.

We have perused copy of order condoning delay of 14 days and admitting first appeal stamp No. 12642/2014 on 5th November, 2014. We have also perused order dated 18.4.2015 mentioned supra. One of us (B.P. Dharmadhikari, J.) is party to both these orders.

In the present matter, the proceedings seeking condonation of delay of 149 days are filed on 7th November, 2014 i.e. just a two days after the order dated 5th November, 2014. Learned AGP has invited our attention to provisions of Order 41 Rule 22 of C.P.C.

Therefore, we find substance in objection being raised by Advocate Mehta. Though the delay has not been

properly explained in application under section 5, in light of the undisputed developments, we condone delay.

Accordingly, Application CAF No. 386/2015 is allowed. Registry to register F.A.St. No.21924/2014.

F.A.St. No.21924/2014.

We have directed registry to register this appeal by condoning delay by separate order.

Admit.

Advocate Mehta waives notice for respondent.

Put up with First Appeal No. 507/2014 & F.A. Stamp No. 12642/2014.

CAF 387/2015

Notice, returnable on 7th **September, 2015.**

Advocate Mehta waives notice for respondent/land owner.

JUDGE

JUDGE