

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

934 CIVIL APPLICATION NO. 7972/2015 IN
FAST/9885/2015
WITH CA/7973/2015 IN FAST/9885/2015 WITH
CA/7978/2015 IN FAST/10377/2015 WITH CA/7979/2015
IN FAST/10377/2015

THE EXECUTIVE ENGINEER, NANDED MINOR IRRIGATION
THR MEDIUM PROJECT DIVISION
VERSUS
PRALHAD MALHARI MUNDHE AND OTHERS

...

Advocate for Applicants : Mr. Patil Ruturaj C.
Mr. NP Patil – Jamalpurkar, Adv. For Resp.Nos. 1
to 3;
Mr. G.O.Wattamwar, AGP for Respondent:4.

CORAM : P.R.BORA, J.

DATE : 7th December, 2016.

PER COURT :

1) Heard learned Counsel appearing for the
appellant - acquiring body and learned Counsel
for the respondent - claimants. Learned Counsel
for the acquiring body submitted that delay of
695 and 700 days in respective matters has
occurred in filing the present appeals for the
reason that the acquiring body was not duly
represented before the Reference Court. Learned

Counsel submitted that learned AGP had appeared for the acquiring body and no separate advocate was nominated/allotted for the acquiring body and in such circumstances, the necessary facts and the necessary evidence could not be brought on record. The learned Counsel submitted that the delay is unintentional and deserves to be condoned and opportunity needs to be given to the acquiring body to contest the matters on merits. The learned Counsel further submitted that the Reference Court has enhanced the market rate of the acquired lands by six-times than awarded by SLAO and in the circumstances, the appeals need to be decided on merits.

2) Shri N.P.Patil – Jamalpurkar, learned Counsel appearing for the respondents – original claimants, has opposed for condoning the delay. The learned Counsel, inviting my attention to the averments in paras 1 and 2 of the present applications, submitted that contradictory statements are made by the appellant acquiring

body. The learned Counsel submitted that the acquiring body had got knowledge of passing of the impugned Award on 1st January, 2013 itself and despite that no immediate steps were taken by the acquiring body. The learned Counsel further submitted that absolutely false statement is made in para 2(i) of the application that the acquiring body got the knowledge of passing of the impugned Award in December 2014. The learned Counsel submitted that for huge period of about two years, no explanation has been given and as such, the delay does not deserve to be condoned. The learned Counsel further submitted that though the acquiring body has obtained a conditional stay from this court, it has not complied with the said order and has not deposited a single paise towards the amount of compensation. The learned Counsel, therefore, prayed for rejecting the applications for condonation of delay.

3) The learned Counsel for the respondents – original claimant alternatively submitted that

if the acquiring body deposits entire amount of compensation, as ordered by this Court while granting interim stay to the execution of the impugned Award and shows its willingness to argue the matter finally without loss of any time, the claimants may not have objection for condoning the delay. The learned Counsel submitted that otherwise, condoning the delay would amount to granting premium to the acquiring body for their negligence.

4) After having heard the learned Counsel appearing for the parties and on perusal of the contents of the applications as well as the grounds of objections raised in the memo of appeals, it appears that the matters deserve to be considered on merits. However, the contentions raised by learned Counsel for the claimants that the reasons assigned are insufficient for condoning the delay, also cannot be lost sight of. However, it further appears to me that if the appellant argues the matter

finally immediately without any loss of time, opportunity can be awarded on some condition. The learned Counsel for the claimants was fair enough in conceding to the said proposal. In view of the above, following order is passed, -

ORDER

- i) The delay caused in filing the appeals is condoned;
- ii) The appeals be registered in accordance with law;
- iii) After registration of the appeals, issue notices to the respondents, returnable after six weeks. Learned Counsel and learned AGP waive service for respective respondents;
- iv) Call R and P. It is clarified that if R and P is not received before the due date, the matters will be heard on the basis of available material;

v) In the meanwhile, the acquiring body to deposit the amount of compensation as earlier directed by this Court.

. Stand over to 25th January, 2017.

(P.R.BORA)
JUDGE

bdv/