

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4654 OF 2016

Baban s/o Yedba Sawant,
Age-55 years, Occu-Agriculturist,
R/o Sakat (Bk.)
Tq.Paranda, Dist.Osmanabad
At present residing at
Near Swargate Police Chowki,
Pune

-- PETITIONER

VERSUS

The State of Maharashtra,
Through the Collector, Osmanabad

-- RESPONDENT

WITH
WRIT PETITION NO.4657 OF 2016

Pratap S/o Yedba Doke,
Age-58 years, Occu-Agriculturist,
R/o Sakat (Bk.)
Tq.Paranda, Dist.Osmanabad,
At present residing at
Aurangapura, Aurangabad
Tq. and Dist.Aurangabad

-- PETITIONER

VERSUS

The State of Maharashtra,
Through the Collector, Osmanabad

-- RESPONDENT

WITH
WRIT PETITION NO.4658 OF 2016

Pandurang Sambhaji Fartade,
Age-70 years, Occu-Agriculturist,
R/o Sakat (Bk.),
Tq.Paranda, Dist.Osmanabad,
At present residing at
Near Hadapsar Police Chowki, Pune

-- PETITIONER

VERSUS

The State of Maharashtra,
Through the Collector, Osmanabad

-- RESPONDENT

Mr.A.S.More, Advocate for the petitioners.
Mr.S.N.Kendre, AGP for the respondent/State.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 09/01/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The identically placed petitioners are aggrieved by the order dated 02/08/2000 by which the proceedings LAR No.975/1997, 942/1997 and 960/1997 have been rejected under Order 7 Rule 11(c) of the CPC since the petitioners/claimants did not take steps to affix sufficient court fee stamps.
3. These matters were heard at length on 04/01/2017 and 05/01/2017. Learned Advocate for the petitioners have submitted on instructions that each of the petitioners would file an undertaking in this Court stating therein that if the LAR proceedings are decided in their favour, they would not claim any statutory benefits from the

dates of the impugned orders till the date on which they would deposit the appropriate court fees before the LAR Court on which condition, the LAR proceedings would be restored.

4. The Hon'ble Supreme Court in the matter of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107] has issued certain guidelines, which are as under :-

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact

he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

5. It is apparent that the failure to affix sufficient court fees has led to the rejection of the LAR proceedings. Practically, 16 years have lapsed after which the petitioners have approached this Court. Reliance is placed upon the order of the Hon'ble Supreme Court in the matter of M/s Arti Spinning Mills and others Vs. State of Haryana and another, [2016 All SCR 865] and it has been contended that none of the petitioners would claim the statutory benefits for the period aforesaid.

6. Learned AGP has strenuously opposed these petitions by submitting that no sympathy deserves to be shown towards these petitioners. The delay is inordinate.

7. I find that laches have not been attributed to the conduct of these petitioners. Being agriculturist, after filing of the LAR proceedings, they were given to understand that it would take few years for a decision in the said matter. Their legal representative representing them before the LAR Court failed to inform them that

the proceedings have been rejected on account of their failure to deposit requisite court fees.

8. Considering the judicial pronouncements referred to hereinabove, I find that ends of justice would be met by permitting the petitioners to file individual affidavits in this Court declaring that they would not claim any statutory monetary benefits from the date of the rejection of the LAR proceedings till the requisite court fees are deposited in the said Court. On this condition, the LAR proceedings could be restored after the requisite court fees have been deposited. If this view is not taken in these matters, all doors of litigation would be closed on the petitioners who have already lost their agricultural lands and would be deprived of seeking an enhancement in compensation.

9. In the light of the above, these petitions are partly allowed. The impugned orders dated 02/08/2000, are quashed and set aside and LAR proceedings Nos. 975/1997, 942/1997 and 960/1997 are restored to the file of the concerned LAR Court on the following conditions :-

[a] Each of the petitioners would file an individual affidavit undertaking in this Court on or before 16/01/2017.

[b] The affidavit/undertaking shall mention that they would not claim statutory benefits for the period beginning from the date of the impugned order till 15/02/2017.

[c] The affidavit/undertaking will also mention that the requisite court fees would be deposited before the LAR Court on or before 15/02/2017.

[d] Copy of the affidavit/undertaking shall also be filed before the LAR Court.

[e] The litigating sides shall appear before the LAR Court on 15/02/2017.

[f] Only after the above conditions are complied with, the LAR Court shall take up proceedings and proceed to decide the said proceedings on their own merits and preferably on or before the 22/12/2017.

10. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)