

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 3817 OF 2016

Godavari Deepa Rathod,
Age 50 years, occup. Agril.,
R/o Deo Akola, Tq. Jafrabad,
Dist. Jalna .. Petitioner

versus

The State of Maharashtra,
through the District Collector,
Jalna .. Respondent

Mr. Ajit B. Kale, Advocate for petitioner
M P. N. Kutti, Assistant Government Pleader for respondent

CORAM : SUNIL P. DESHMUKH, J.

Date : 31st August, 2017

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties by consent finally.

2. Petitioner's agricultural land situated at village Nandkheda, Taluka Jafrabad, District Jalna was acquired by the State government-respondent and award granting

compensation in respect of its acquisition had been passed on 23-12-1995. The payment of award had been accepted by petitioner – claimant under protest.

3. On application by petitioners to the Special Land Acquisition Officer, Jalna, reference under section 18 of the Land Acquisition Act, 1894 had been made to the reference court (District Judge, Jalna) and was numbered as Land Acquisition Reference No. 425 of 1997. However, under an erroneous assumption that the claimant is exempted from payment of court fees, the petitioner had not paid requisite court fees. Under the circumstances, under an order dated 06-09-2007, reference stood rejected in the absence of petitioner, her advocate and for non payment of court fees.

4. Aforesaid rejection, it is claimed by petitioner, had not been noticed by her for quite a long time and while in October, 2008 it had been realized, an application for certified copy of order rejecting the reference was filed and upon receipt of certified copy, application for restoration of the land acquisition reference had been filed which had been delayed by 3 years and odd days. Along with

restoration application, application for condonation of delay had been filed bearing Miscellaneous Civil Application No. 173 of 2008.

5. Learned District Judge-2 by order passed on 05-01-2009, rejected application for condonation of delay, observing that the Land Acquisition Act, 1894 does not provide for condonation of delay in restoration of land acquisition reference and further that requisite court fees had not been paid and while despite notice the petitioner had failed to appear before the court, request for delay condonation does not deserve consideration.

6. Learned counsel for the petitioner states that provisions of the Code of Civil Procedure, 1908, so far as are not inconsistent, would be considered to hold good for land acquisition proceedings and further submits that the order impugned depicts too technical an approach especially on the factual background that in similar circumstances, in other matter the authority of the same peer had condoned delay and restored the land acquisition references.

7. Having regard to that the order of dismissal of land acquisition reference had not been received at the end of the petitioner and having regard further to that the delay appears to be not deliberate and intentional while notice is expected, it would be expedient to consider request for condonation of delay and restore the land acquisition reference in larger interest of justice particularly when petitioner appears not to be a literate lady and is hailing from remote area and has lost her land in acquisition while, on instructions, learned counsel for the petitioner states that interest for the period from the date of order of rejection of delay condonation application to the date of order on this petition would be waived and would not be insisted upon by the petitioner, it would be expedient to consider request under the writ petition.

8. Having regard to decisions of the supreme court in the cases of *Collector, Land Acquisition, Anantnag vs. Mst. Katiji*, reported in *AIR 1987 SC 1353* and *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others*, reported in *(2013) 12 SCC 649* and also to several orders passed by this

high court condoning delay, in the facts and circumstances, I deem it expedient to consider the request for condonation of delay in filing application for restoration of land acquisition reference.

9. In the circumstances, writ petition is allowed in terms of prayer clauses (C), (D) and (E) subject to that for the period from 05-01-2009 to 03-08-2017, petitioner would not claim any interest if land acquisition compensation is enhanced.

10. Rule made absolute accordingly. Writ petition stands disposed of.

SUNIL P. DESHMUKH,
JUDGE

pnd