

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

CIVIL APPLICATION NO. 11311 OF 2016 IN FAST/17902/2016

BALBHIM SHIVRAM LONDHE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Applicant : Mr. H. D. Deshmukh.
AGP for Respondents : Mr. S. R. Yadav-Lonikar.

...
WITH CA/11312/2016 IN FAST/17904/2016
WITH CA/11313/2016 IN FAST/17911/2016
...

CORAM : K.K. SONAWANE, J.

DATED : 21ST NOVEMBER, 2017.

Order :-

1. Heard Mr. Deshmukh, learned counsel for applicants and learned AGP for respondents. Perused the applications.
2. Learned counsel for applicants submits that there is delay of 583 days caused for filing first appeals against impugned Judgment and Award passed by 2rd Joint Civil Judge, Senior Division, Osmanabad, in Land Acquisition References No. 525, 524, 526 of 2011 dated 11-08-2011. The delay caused was not intentional or deliberate, but it was caused due to the unavoidable circumstances. Due to financial crisis, they could not present appeal within stipulated period. In case, delay is not condoned, it will cause prejudice to the applicants, therefore, applicants prayed to condone the delay. Moreover, the learned counsel for applicants submits that the applicants will not claim statutory benefits as well as amount of interest as laid down in the Land Acquisition Act, 1894, for the period of delay sought to be condoned, in case of success of appeal on merit.

3. The learned AGP for respondents No. 1 and 2 raised objection and submits that there is inordinate delay, which is not explained in proper manner, therefore, application be rejected.

5. After giving anxious consideration to the submission canvassed on behalf of the both sides, it appears that, matter pertains to the determination of market value of the acquired land under the Land Acquisition Act, 1894.

6. Considering the nature of the subject matter and reasons mentioned in the applications for condonation of delay, I do not find any impediment to condone the delay. It is settled law that, liberal and pragmatic approach is essential to be adopted by avoiding pedantic approach while dealing with the application for condonation of delay. According to applicant, the meager market value was determined by learned Reference Court for his land under acquisition. There is sufficient cause to condone the delay. It would not cause any prejudice and injustice to the respondents. In contrast, it would sub-serve the purpose for substantial justice. In addition, the applicants (original claimants) have shown their willingness/ inclination that they will not claim statutory benefits as mentioned above. In such circumstances, by imposing aforesaid fetter of waiver of statutory benefits on the part of applicants-appellant (original claimants), there would not be any impediment to condone the delay. The applications for condonation of delay deserve to be allowed.

7. In sequel, applications stand allowed. The delay caused to present the appeal/s against the impugned Judgment and Award stands condoned subject to condition that applicants-appellants shall not claim statutory benefits as well as amount of interest as laid down in the Land Acquisition Act, 1894 for the delayed period allowed to be condoned, in case, any enhanced compensation is awarded by this Court after adjudication of appeal on merit.

8. Pursuant to aforesaid waiver of statutory claim, the applicants-appellants shall furnish undertaking to that effect and place it on record of the appeal to enable this Court to take note of the same, while decision of the appeals on merit. The civil applications are allowed in aforesaid terms and stand disposed of. Registry to take requisite steps for further process in due course.

9. After registration of appeal/s, issue notice to respondents.

10. Learned AGP waives service of notice for respondents.

11. Meanwhile, call for record and proceedings from the concerned reference Court. After receipt of record and proceedings, list the matters for hearing in due course.

[K. K. SONAWANE]
JUDGE

rrd.