

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

919 CIVIL APPLICATION NO. 1916 OF 2017
IN FAST/21250/2016

JOTINATH RATANNATH JOGI DIED THR HIS LRS KUNDABAI ANDORS

VERSUS

THE STATE OF MAHARASHTRA AND ORS

...

Advocate for Applicants : Mr. S. P. Katneshwarkar.
AGP for Respondents: Mr. R.B. Bagul

CORAM : K.K. SONAWANE, J.

Order reserved on : 10th August, 2017
Order pronounced on : 23rd August, 2017.

PER COURT:

1] Heard learned counsel for the applicant and learned AGP for respondent No.2. None appears for respondent No.1 Acquiring Body.

2] Perused the application Learned counsel for the applicants submits that the land of the applicants located at village Tawashi Gad, Tq. Lohara, Dist Osmanabad came to be acquired for public purpose i.e. Earthquake Rehabilitation. Being dissatisfied with the amount of compensation as per award under Section 11 of the Land Acquisition Act, the applicants preferred Land Acquisition Reference No. 433 of 1998 for enhancement of compensation amount. The learned trial court partly

allowed the reference vide judgment and award dated 8.3.2004. Being dissatisfied with the findings of the Reference Court for enhancement of amount determined in respect of land under Acquisition, the applicant is intending to prefer an appeal to redress his grievances but there is a delay of more than 4418 days to prefer an appeal. According to learned counsel, the delay caused to prefer appeal is not deliberate and intentional but due to lack of knowledge about pendency of Land Acquisition proceedings.

3] The learned counsel for applicant submits that, the L.A.R. No. 433 of 1998 came to be filed by the husband of the applicant No.1 and father of applicant Nos. 2 to 5. He was looking after the court proceedings of the Reference Petition. But, he passed away in February, 2015. The applicants were not aware about the pendency of the Reference Petition. After demise of husband, the applicants made enquiry with their learned counsel and at that time, they came to know about the impugned judgment and award passed by the learned Reference Court on 8.3.2004. Thereafter, the applicants were advised to prefer an appeal against the judgment and award for the market value of the lands, as the same was insufficient and meager one. The applicants procured the requisite documents of certified copies of the impugned judgment and award and thereafter, preferred the present appeal, but there is a delay of about 4418 days, which according to learned counsel is not deliberate and intentional.

3] Learned AGP appearing for the respondent State raised objection and submits that there is inordinate delay and the applicants

failed to explain the same by showing sufficient cause. He therefore prayed that the application for condonation of delay be dismissed.

5] Admittedly, there is a delay of 4418 days for filing the present appeal against the impugned judgment and award passed by the learned trial court in Land Acquisition Reference No. 433 of 1998. The learned trial court passed impugned award on 8.3. 2004 and partly allowed the Reference Petition filed on behalf of the husband of applicant No.1 and father of applicant Nos. 2 to 5. The crucial issue which is to be pondered over is, in regard to the explanation offered on behalf of applicants for approaching to this court at such belated stage, is to be accepted being a sufficient cause, as contemplated under Section 5 of the Limitation Act. According to learned counsel, the applicants were not aware about pendency of the Reference Petition. Undisputedly, “sufficient cause” referred in Section 5 of Limitation Act would be the cause for which the applicant could not be blamed for not taking prompt actions into the matter. It is a settled rule of law that sufficient cause means that the party should not have acted in a negligent manner or there were want of bonafides on its part in view of the facts and circumstances of the case or it should not be alleged that the party has not acted diligently or remained inactive. Their Lordships of the Apex Court in the case of **Basavraj vs. Land Acquisition Officer (2013)14 SCC 81** in para. 9 observed as under :-

“9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The

meaning of the word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. Therefore, the word “sufficient” embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”. However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See *Manindra Land and Building Corpn. Ltd. Vs. Bhutnath Banerjee*, *Mata Din Vs. A. Narayanan*, *Parimal Vs. Veena* and *Maniben Deveraj Shah Vs. Municipal Corpn. Of Brihan Mumbai.*)”

6] In the instant case, I find force in the arguments advanced on behalf of learned AGP for respondent No.2. The impugned award of the Reference Court came to be passed in the month of March, 2004. The husband of the applicant No.1 and father of applicant Nos. 2 to 5 died in the year 2015. It was incumbent on the part of the original claimant - husband of applicant No.1 and father of applicant Nos. 2 to 4 to take prompt action with due diligence by filing the appeal alongwith application for condonation of delay. But, he remained idle and did not take efforts for filing appeal.

But, after his demise, his LRs came forward and filed the present application with purported motivation. The facts and circumstances of the instant case constrains this Court not to exercise discretion for the lack of sufficient grounds to condone the delay. The applicants failed to satisfy that they were prevented by any sufficient cause from prosecuting their case. In fact, the original claimant himself should have acted with due diligence and filed the appeal. In such circumstance, I am not inclined to condone the delay. Hence, the application being devoid of merit deserves to be rejected. In sequel, the application stands rejected. No orders as to costs.

[K.K. SONAWANE]
JUDGE.

grt/-