

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

CIVIL APPLICATION NO. 3023 OF 2017
IN FAST/21373/2016

RAGHUNATH RAMRAO JADHAV
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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

CORAM : K.K. SONAWANE, J.

DATED : 21ST NOVEMBER, 2017.

Order :-

Heard Mr. Jaybhar, learned counsel for applicant.

2. Issue notice to respondents. Learned AGP waives service of notice for respondents No. 1 and 2.

3. Learned counsel for applicant submits that there is delay of 419 days caused for filing first appeal against impugned Judgment and Award passed by 3rd Joint Civil Judge, Senior Division, Aurangabad, in Land Acquisition Reference No. 449 of 2009 dated 20-02-2015. The delay caused was not intentional or deliberate, but caused due to the unavoidable circumstances. The applicant is poor agriculturist doing the labour work. Due to financial crisis, he could not present appeal within stipulated period. There is an every hope of success in the appeal. In case, delay is not condoned, it will cause prejudice to the applicant-original claimant, therefore, applicant prayed to condone the delay. Moreover, the learned counsel for applicant- original claimant submits that the applicant 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.

4. 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 application 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 applicant (original claimant) has shown his willingness/ inclination that he will not claim statutory benefits as mentioned above. In such circumstances, by imposing aforesaid fetter of waiver of statutory benefits on the part of applicant-appellant (original claimant), there would not be any impediment to condone the delay. The application for condonation of delay deserves to be allowed.

7. In sequel, application stands allowed. The delay caused to present the appeal against the impugned Judgment and Award stands condoned subject to condition that applicant-appellant 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 applicant-appellant 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 application is allowed in aforesaid terms and stand disposed of. Registry to take requisite steps for further process in due course.

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

10. Learned AGP waives service of notice for respondents No.1 and 2 State of Maharashtra and Special Land Acquisition Officer.

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

[K. K. SONAWANE]
JUDGE

rrd.