

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1) CA No. 10901.16 & other

**924 CIVIL APPLICATION NO. 10901 OF 2016
IN FAST/23032/2016**

WITH

CA/10899/2016 IN FAST/23467/2016

WITH

CA/10900/2016 IN FAST/23467/2016

WITH

CA/10902/2016 IN FAST/23032/2016

THE KRUSHI UTPANNA MARKET COMMITTEE, KADA
VERSUS
HAFEZABI SYED JAKERIYA THR POWER OF ATTORNEY HOLDER
RAFEE JAKERIYA SHAIKH AND ANR

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Advocate for Applicant : Mr.Syed G R
AGP for Respondent State: Mr. S.P.Sonpawale
Mr. Bhapkar S.L., Adv., for respective respondents in both the
matters.

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CORAM : P.R. BORA, J.

Dated: July 18, 2017

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PER COURT :-

1. The present applications are filed seeking condonation of delay which has occurred in filing the appeals by the acquiring body against common impugned judgment and award passed in Land Acquisition Reference Nos. 97/2005 and 98/2005 on 12th of March, 2009 and so also seeking stay.

2. Delay of 2603 and 2605 days, respectively, has occurred in filing the present appeals by the acquiring body. Shri G.R.Syed, learned Counsel appearing for the acquiring body,

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submitted that lack of proper legal advice is the main reason that the appeals could not be filed by the acquiring body within the stipulated period of limitation. Learned Counsel submitted that the Special Land Acquisition Officer had offered compensation for the acquired land at the rate of Rs.100/- per Are which has been enhanced by the Reference Court to Rs.10,000/- per Are. Learned Counsel submitted that the enhancement, as has been awarded by the Reference Court, at the face of it, is unreasonable and on much excessive side. Learned Counsel submitted that public money is involved in all these acquisition proceedings and having regard to the fact that the compensation has been unreasonably enhanced by the Reference Court, opportunity needs to be given to the acquiring body to agitate its grievance on merits. Learned Counsel submitted that though some earlier rounds of litigation had taken place pertaining to the acquisition, the quantum of compensation was never the subject for challenge and the issue was whether the Reference Applications were filed within the period of limitation or otherwise. Learned Counsel submitted that the Reference Court had earlier held the Reference Applications to have been filed beyond the period of limitation and resultantly, the Reference Applications were dismissed. The claimants filed the appeals before this Court against the judgment and order so passed and in the said appeals, this Court held the Reference Applications to have been filed within the period of limitation. Learned Counsel further submitted that the said

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decision was challenged by the acquiring body before the Hon'ble Apex Court, however, the Special Leave Petitions so filed by the acquiring body were dismissed. Thereafter also, no such appropriate legal advice was received to the Market Committee asking the said body to challenge the judgment of the Reference Court on the point of quantum and in all this process, delay has occasioned in filing the present appeals. Learned Counsel, therefore, prayed for condonation of delay and to give an opportunity to the acquiring body to agitate the grievance on merits.

3. Shri Bhapkar, learned Counsel appearing in both the matters for the original claimants, opposed for condonation of delay. Learned Counsel pointed out that in an appeal filed by the original claimants before this Court, bearing Appeal Nos. 102 and 103 of 2010, which were commonly decided by this Court vide judgment passed on 27th of April, 2011, this Court has not only allowed the appeals filed by the original claimants on the point of limitation but in many words has also confirmed the market value as has been determined by the Reference Court and the enhancement granted in the amount of compensation accordingly. Learned Counsel, taking me through the discussion made by this Court in the aforesaid judgment, submitted that a specific query was made during the course of the arguments in the said matters with the Counsel appearing for the acquiring body, as to what the

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acquiring body has to say on the quantum of compensation as has been awarded by the Reference Court, and the acquiring body was specifically called upon to make submission even on the point of quantum, however, nothing was submitted on behalf of the acquiring body and in such circumstances this Court has, considering the discussion made by the Reference Court, confirmed the finding recorded by the Reference Court on the point of quantum. Learned Counsel submitted that, thereafter, in the Special Leave Petition, the acquiring body has raised the challenge on both the counts; on the point of limitation and quantum and the said Special Leave Petition has been dismissed by the Honourable Apex Court.

4. Learned Counsel further submitted that, the claimants had preferred execution proceedings in the year 2010 and the same were contested by the acquiring body. Learned Counsel submitted that on the point of quantum, this Court has given verdict in the year 2011. In the circumstances, if at all the acquiring body was intending to file appeal, the same could have been filed immediately by the acquiring body, however, for more than six years, the acquiring body has not taken adequate steps and no explanation has been given by the acquiring body; much less, sufficient explanation as about the occurrence of the delay. Learned Counsel submitted that even otherwise, the issue as regards of quantum, which the acquiring body now is agitating, is

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concluded by the judgment delivered by this Court on 27th April 2011 (Coram: S.V.Gangapurwala, J.). Learned Counsel submitted that in that view of the matter also it is not open now for the acquiring body to reopen the said issue before this Court in the present appeals. Learned Counsel submitted that neither on merits the main contention raised by the acquiring body, nor on the point of limitation, any case is made out by the acquiring body. Learned Counsel, therefore, prayed for rejection of the applications.

5. I have carefully considered the submissions advanced by the learned Counsel for the applicant and learned Counsel appearing for the respondents i.e. original claimants. The reason which has been assigned by the acquiring body, apparently, cannot be accepted. The record shows that the acquiring body was throughout represented by the Counsel and the legal assistance was thus constantly taken by the acquiring body. When the matter was taken up to the Honourable Apex Court, it cannot now lie in the mouth of the acquiring body that they were not getting proper legal advice so as to file appeal against the judgment given by the Reference Court in the year 2009. Learned Counsel for the acquiring body further could not give any cogent explanation as to the observations made by this Court in the common judgment delivered in First Appeal No.102 of 2010 and First Appeal No. 103 of 2010 in the year 2011 asking the

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acquiring body to make submissions on the point of quantum also. Learned Counsel pointed out that the query was responded by the learned Counsel appearing for the acquiring body, saying that the acquiring body may file an appeal on the point of quantum. It is evident that the same had happened in the year 2011. So, when it was the intention of the acquiring body in the year 2011 to challenge the judgment of the Reference Court on the point of quantum also, no further explanation is coming forth as to why the acquiring body then did not file appeal till the year 2016.

6. Considering the matter from every angle, it does not appear to me that any sufficient cause is made out by the acquiring body so as to condone the delay of such a huge period of 2603 days. It need not to be stated that unless sufficient cause is shown, the party cannot be permitted to agitate the matter on merits and the appeal cannot be admitted on insufficient grounds. In view of the fact that the applicants have failed in showing sufficient cause for condonation of delay which has occasioned in filing the appeals by them, I am not inclined to allow the present applications.

7. Though some observations are made hereinabove as about the merit of the matter in reference to the earlier proceedings, it is made clear that, without going into the merits of

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the contentions so raised, I am rejecting the applications for condonation of delay purely on the point of failure on the part of the acquiring body in showing sufficient cause for condonation of delay. Hence, the following order:

ORDER

1. Both the Civil Applications for condonation of delay are rejected. Consequently, Civil Applications seeking stay stand disposed of.

(P.R. BORA, J.)

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