

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

914 CIVIL APPLICATION NO. 12527 OF 2016
IN FAST/25457/2016

GOVIND GANGARAM KAMBLE

VERSUS

THE EXECUTIVE ENGINEER, MINOR IRRIGATION DIVISION, LATUR AND ANR
...

Advocate for Applicant : Mr. S.S. Halkude
AGP for Respondents: Mr. C.V. Dharurkar

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 applicant submits that the land of the applicant located at village Kumtha, Taluka Ahmedpur, Dist. Latur came to be acquired for public purpose of construction of percolation tank. Being dissatisfied with the amount of compensation as per award under Section 11 of the Land Acquisition Act, the applicant preferred Land Acquisition Reference No. 27 of 2003 for

enhancement of compensation amount. The learned trial court partly allowed the reference vide judgment and award dated 6.2.2007. Once again being aggrieved 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 3366 days to prefer an appeal.

3] According to learned counsel, the delay caused to prefer appeal is not deliberate and intentional but due to physical ailment of the applicant. He explained that after retirement from the defence service, the applicant was not keeping good health continuously and there were complications in regard to his health. He was under medical treatment. The learned counsel submits that the applicant was suffering from Diabetics and other physical ailments. There were complaints of internal organs like liver, Gall bladder, prostate, pancreas, spleen etc. After due investigation, multiple gall stones of 10-15 mm size in cluster with patchy calcification in the gall bladder were detected and prostate glands were found enlarged in size. The applicant had undergone various surgical operations including the operation of leg knee and ankle because of infections on account of Diabetics. The relevant documents of medical treatment prescriptions, discharge card etc. are produced on record vide Exhibit A. According to learned counsel, the applicant is a poor, illiterate and retired army person. In the month of June, 2016, he visited to his relatives and that time he came to know about the appeal to be filed in the High Court, against the meager

amount of compensation granted by the Reference Court. Thereafter, he procured the Certified copy of the award of reference Court and preferred the appeal before this Court. It has been submitted that the delay was not intentional and malafide but caused due to ill- health of the applicant as well as ignorance of the legal procedure. Therefore, learned counsel prayed to condone the delay.

3] Learned AGP appearing for the respondent State raised objection and submits that there is inordinate delay and the applicant failed to explain the same by showing sufficient cause. Learned AGP pointed out that the medical papers produced on record pertains to his physical ailment in the year 2010. The impugned judgment passed by the Reference Court was of the year 2007 and since then the applicant did not take any action for filing the appeal. In such circumstances, the inordinate delay caused to file the appeal should not be condoned in the interest of justice.

4] Admittedly, the matter pertains to the Land Acquisition proceedings. The Reference Court partly allowed the claim of the applicant and allowed enhancement of compensation amount @ Rs. 40,000/- Per Acre. The learned Reference Court also allowed the statutory benefits to the claimants. After efflux of colossal period of near about 9 to 10 years, the applicant preferred the First Appeal alongwith the application for condonation of delay.

5] Admittedly, there is a delay of 9 to 10 year for filing the

present appeal against the judgment and award passed by the learned trial court in Land Acquisition Reference NO. 271 of 2003. The impugned award is passed on 26.2.2007 and partly allowed the Reference Petition filed on behalf of the applicant. The crucial issue which is to be pondered over is, in regard to the explanation offered on behalf of the applicant for approaching to the court at such a belated stage, is to be accepted being a sufficient cause, as contemplated under Section 5 of the Limitation Act. According to learned counsel, the applicant was suffering from ailments and it was itself a good ground for condonation of delay. Undisputedly, sufficient cause is 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 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 of 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 February, 2007. The documents of medical treatment produced on record vide Exh. A reflects that the applicant was under medical treatment in the year 2010. There was no explanation on record in regard to the period since February, 2007 till July, 2010. In such circumstances, it would be cumbersome to accept the explanation propounded on behalf of applicant for delay caused to prefer an appeal owing to his physical ailment. In contrast, the attending circumstances demonstrate that the applicant failed to take action promptly with due diligence since 2007 till his physical ailment in the year 2010. The applicant remained inactive for about 3 years after impugned judgment and award passed by the learned Reference Court. The facts and circumstances of the instant case constrains this Court not to exercise discretion for the lack of sufficient ground to condone the delay. The applicant failed to satisfy

this Court that he was prevented by any sufficient cause from prosecuting his case. 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/-