

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

937 CIVIL APPLICATION NO. 13755 OF 2012
IN FAST/25853/2012

THE STATE OF MAHARASHTRA
VERSUS
BANKAT DNYANOBA KAWADE

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A.G.P. for the Applicant/State : Mr. S.R. Yadav
Advocate for the Respondent : Mr. S.A. Wakure

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CORAM : K.K. SONAWANE, J.

DATE : 22nd September, 2017

PER COURT :

1. Heard learned A.G.P. for the applicant and learned counsel for the respondent.

2. Perused the application. Learned AGP submits that due to official procedure to present an appeal, delay has been caused. He submits that delay is not deliberate and intentional but owing to administrative compliance. As such, he prayed to condone the delay.

3. Learned counsel for the respondent raised objection and submits that delay has not been properly explained and it would be unjust and improper to condone the delay.

4. I have heard the submission canvassed on behalf of both sides and perused the application as well as the impugned judgment and award against which the applicant State is intending to file an appeal.

5. The matter pertains to land acquisition proceedings. The learned Reference Court partly allowed the application of the respondent filed under Section 18 of the Land Acquisition Act. The applicant State is intending to agitate the findings recorded by the learned Reference Court on the issue of market value arrived at by the learned Reference Court, which according to State, is exorbitant. It has been contended that after the impugned Judgment and award of the Reference Court, the concerned Law Officer forwarded the proposal for filing an appeal against it to the concerned Law and Judiciary Department. The matter was scrutinized after efflux of colossal period by the concerned department and lateron, referred the proposal to the office of the Government Pleader, High Court, for further process. But, there were not relevant documents accompanied with the proposal for appeal. After procedural compliance, the appeal came to be filed at belated stage. The learned A.G.P. fervidly contends that the delay was not intentional and deliberate but owing to complaine of official process. Obvioulsy, the circumstances adumbrate that the concerned officials did not deal with the matter with due diligence and reasonable precautions but the

matter came to be handled in a very casual and lethargic manner.

6. At this juncture, it would be profitable to refer to the observations of Their Lordships of the Apex Court, in the case of ***State of Karnataka vs. Moideen Kunthi (dead) by LRs and others, (2009)13 SCC 192, in para Nos. 19 and 22 as under :-***

“19. On perusal of the explanation offered it is clear that the officials who were dealing with the matter have either deliberately or without understanding the implications dealt with the matter in a very casual and lethargic manner. It is a matter of concern that in very serious matters action is not taken as required under law and the appeals/petitions are filed after a long lapse of time. It is a common grievance that it is so done to protect unscrupulous litigants at the cost of public interest or public exchequer. This stand is more noticeable where vast tracts of land or large sums of revenue are involved.

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22. The expression “sufficient cause” as appearing in Section 5 of the Limitation Act, 1963 (in short “the Limitation Act”) must receive a liberal construction so as to advance substantial justice as was noted by this Court in *G. Ramegowda vs. Special Land Acquisition*

Officer. Paras. 16-17 of the judgment reads as follows : (SCC pp. 148-79)"

"16. The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it.

17. Therefore, in assessing what, in a particular case, constitutes 'sufficient cause' for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that

those who bear responsibility of Government must have 'a little play at the joints'. Due recognition of these limitations on governmental functioning – of course, within reasonable limits – is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of governmental functioning is procedural delay incidental to the decision-making process. In the opinion of the High Court, the conduct of the law officers of the Government placed the government in a predicament and that it was one of those cases where the mala fides of the officers should not be imputed to Government. It relied upon and trusted its law officers. Lindley, M.R., in *National Bank of Wales Ltd.* In re, observed, though in a different context:

".... Business cannot be carried on upon principles of distrust. Men in responsible positions must be trusted by those above them, as well as by those below them, until there is reason to distrust them.' "

7. In the light of aforesaid exposition of law pertaining to Section 5 of the Limitation Act, I am of the considered opinion that reasonable opportunity needs to be given to the applicant State to ventilate its grievances in the appellate forum. It is to be noted that the matter pertains to the enhancement of compensation amount under the Land Acquisition Act. The appellant is the Government Agency i.e. Acquiring Body and in view of public interest, it is imperative to extend latitude while dealing with the condonation of delay, by adopting liberal and pragmatic approach. If the appeal of the appellant/State i.e. acquiring body is not allowed to be presented for further process on the ground of such default of delay, no person is individually affected but, ultimately, the public interest would be at stake. Therefore, I do not find any impediment to allow the applicant/State to present an appeal by condoning the delay. It would not cause any prejudice or injustice to the respondent. In contrast, it would sub-serve the interest of justice. Hence, the applications for condonation of delay deserve to be allowed. In sequel, the application stands allowed in terms of prayer clause (B). Delay caused in filing appeal against the impugned judgment and award is hereby condoned. Registry to take requisite steps for registration of appeal and list the matter for further process in due course.

(K.K. SONAWANE, J.)