

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

39 CIVIL APPLICATION NO. 16654 OF 2016
IN FAST/29000/2016

DNYANESHWAR ASARAM SURASE
VERSUS
THE STATE OF MAHARASHTRA AND ORS

...
Advocate for Applicant : Mr. Dattatraya R. Jayabhar.
AGP for respondents No.1 and 2 : Mr. R.B. Bagul
Advocate for respondent No. 3 : Mr. P.G. Rodge
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CORAM : K.K. SONAWANE, J.

DATED : 21st AUGUST, 2017.

Order :-

1. Heard learned counsel for applicant and learned AGP for respondents No.1 and 2 and Mr. Rodge for respondent No. 3 - Acquiring Body. Perused the application and relevant documents produced on record.

2. The learned counsel for the applicant - claimant submits that applicant preferred Reference under section 18 of the Land Acquisition Act, 1894 for enhancement of compensation awarded to the acquired land. The learned Reference Court did not appreciate the evidence on record in its proper perspective and awarded meagre amount. The applicant is intending to prefer the first appeal to redress the grievance. But, there is delay in filing the appeal. According to learned counsel, the applicant is rustic and agriculturist and due to financial crises he could not

approach to this Court within stipulated period. The applicant has every hope of success in the appeal. In case, the delay is not condoned, it would caused prejudice to the applicant. The learned counsel for applicant submits that there are other first appeals filed by the adjoining land owners in which the delay was condoned and the matters are listed for final hearing on merits. He further submits that in view of the factum of condonation of delay in other proceedings of adjoining land owners of the same project, he requested to condone the delay. The applicant - appellant 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.

3. The learned AGP for respondents No.1 and 2 and Mr. Rodge, learned counsel for respondent No. 3 raised objection and submits that reasons mentioned in the application are not sufficient to condone the delay. There was huge delay, therefore, they both prayed to dismiss the application.

4. I have given anxious consideration to the arguments advanced on behalf of both sides. Perused the application and relevant documents on record. Admittedly, the matter pertains to enhancement of compensation of land acquired by the respondents for the public purpose. The claimant has also

preferred the Reference under sections 18 of the Land Acquisition Act, 1894 and the same was adjudicated on merits by the Reference Court, however, the claimant is not satisfied with quantum awarded by the Reference Court and market value determined for their acquired land. Hence, the claimant is intending to prefer an appeal, but there is huge delay in filing the appeal.

5. In view of the aforesaid submissions and for the reasons mentioned in the application and also the applicant is rustic and illiterate person having no knowledge about the legal procedure as well as they had a financial crisis, I find it justifiable to give reasonable opportunity to the applicant-appellant in the interest of justice to ventilate the grievances before the Appellate Forum. There is sufficient cause to allow the application for condonation of delay. In addition, the applicant/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, there would not be any impediment to condone the delay. The application for condonation of delay deserves to be allowed.

6. In sequel, application stands allowed. The delay caused to present the appeal against the impugned 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.

7. 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 appeal on merit. Registry to take requisite steps for further process.

8. The civil application is allowed in aforesaid terms and stands disposed of.

Sd/-
[K. K. SONAWANE]
JUDGE

MTK.