

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

21 CIVIL APPLICATION NO. 12518 OF 2014
IN FAST/31322/2014

LAXMAN SHRIPATI POTE AND ANOTHR
VERSUS
SEETABAI SITARAM TELURE

...
Advocate for Applicants : Mr. Chandrakant K. Shinde
Adv. for Respondents: Mr. G.P. Darandale h/f Mr. A.N. Kakade
... .

CORAM : K.K. SONAWANE, J.

DATE : 6th November, 2017.

PER COURT:

Heard learned counsel for the applicant and the learned counsel for the sole respondent. Perused the application and other relevant documents produced on record.

2] This is an application for condonation of delay of 416 days caused in filing the first appeal against the impugned judgment and order passed by the learned Civil Judge Senior Division, Beed in the proceeding referred under Section 30 of the Land Acquisition Act. According to learned counsel for the applicant, the delay is not intentional and deliberate but caused due to lack of knowledge of the proceeding. The learned trial court adjudicated the proceeding under Section 30 ex-parte in absence of the applicants/appellants. The matter pertains to compensation of land under acquisition. The applicant raised object about the payment of compensation of land under acquisition in favour of the respondent Sitabai.

3] The learned counsel Shri Shinde strenuously urged that name of respondent Sitabai Telure was shown erroneously in the revenue record and

on the basis of that she claimed compensation of the land under acquisition. According to him, after knowledge of the impugned decision dated 3rd July, 2017, the applicants procured the requisite documents for filing the present appeal but there was delay. The applicants are the poor agriculturists residing the remote area of Beed district. In such circumstances, in the interest of justice delay may be condoned. He added that in case delay is not condoned, it would cause injustice and prejudice to the applicant on account of ex-parte decision of the concerned civil court. Hence, he prayed to allow the application.

4] The learned counsel for the sole respondent raised objection that there is inordinate delay which has not been properly explained. There was no reasonable cause. Hence, he prayed not to nod in favour of the applicant.

5] Admittedly, the matter pertains to apportionment of compensation under Section 30 of the Land Acquisition Act. The learned Land Acquisition Officer determined the compensation in favour of the sole respondent in the award declared under Section 11 of the Land Acquisition Act. But, the applicant raised objection about the right, title and interest of the sole respondent in the land/property under acquisition. However, the matter was referred to the civil court for determination of the matter in issue. The record adumbrates that there were endeavour to secure the presence of applicants in the proceedings but did not evoke result. The absence of present applicants constrained the learned Civil Court to proceed further for decision of the application in absence of applicants. Accordingly, the learned Civil Judge (S.D.) adjudicated the issue unilaterally against the applicants and determined the right and claim of the property in favour of respondent.

6] Taking into consideration the issue involved in the proceeding and absence of the applicants before the trial court, I find it justifiable to

extend one more opportunity to the applicant to ventilate their grievances against the finding of the learned trial court for redressal. The matter pertains to right and interest in the immovable property under acquisition. In case delay is not condoned, it would cause loss and prejudice to the applicants. Admittedly, there is a delay of 416 days in filing the appeal. It is settled rule of law that while dealing with the application for condonation of delay, liberal and pragmatic approach is essential to be adopted by avoiding pedantic approach. Therefore, I do not find any impediment to allow the application for condonation of delay. 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 further process.

7] After registration of appeal, issue notice to the respondent. Shri A.N. Kakade, Advocate waives notice for respondent sole. Meanwhile, call R.& P. from the concerned trial court. After compliance of procedural formalities of print etc. matter be listed for admission in due course.

[K.K.SONAWANE, J]

grt/-